17

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1918.

No. 746.

AMBROSIO APAPAS, CORNELIO LUBO, FRANCISCO LUBO, ET AL., PLAINTIFFS IN ERROR,

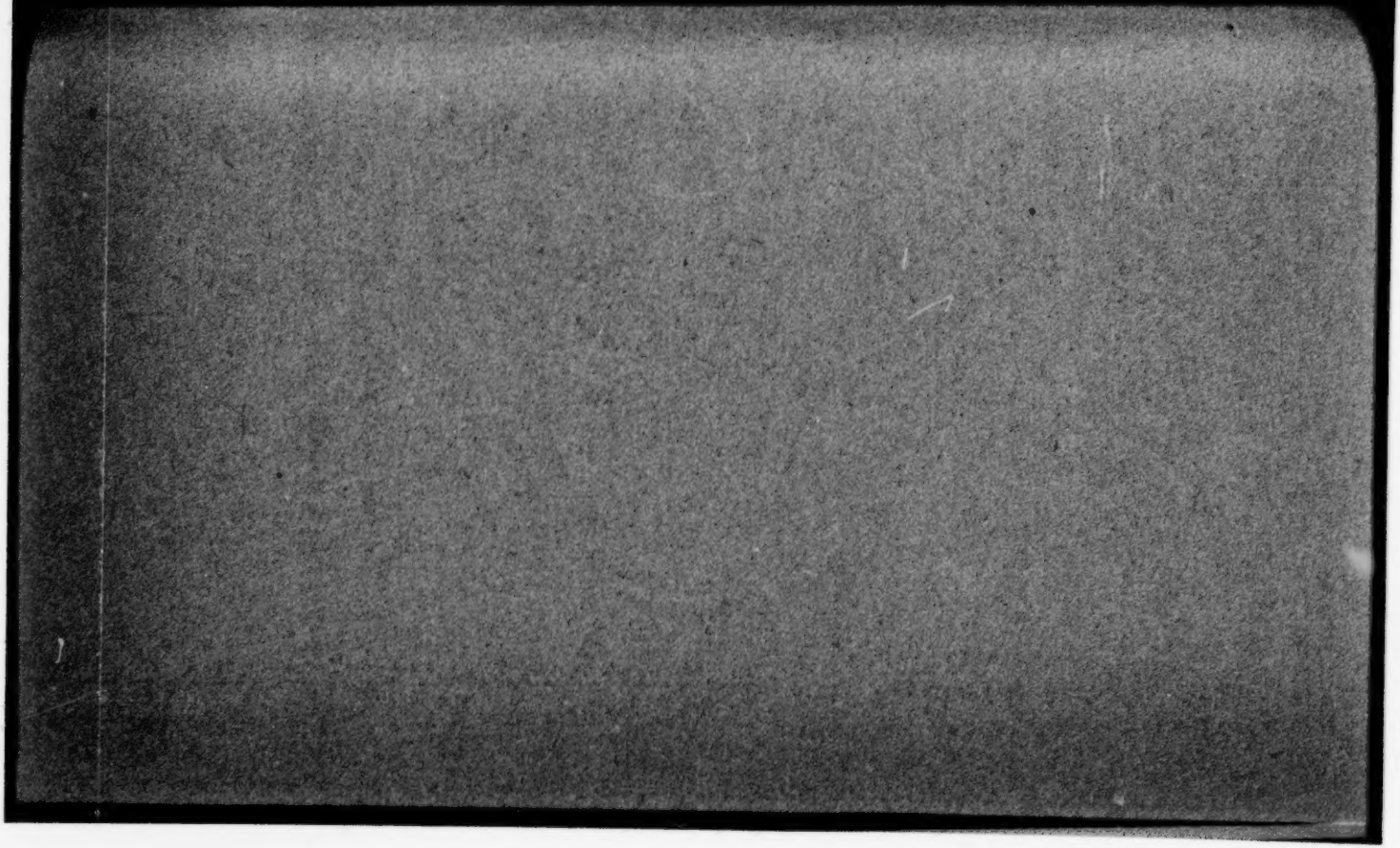
vs.

THE UNITED STATES.

IN ERROR TO THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF CALIFORNIA.

FILED OCTOBER 15, 1918.

(23,897)



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a Supreme Court of the United States.

AMBROSIO APAPAS, CORNELIO LUBO, FRANCISCO LUBO, PABLINO LUBO, PIO LUBO, and LEONICIO LUGO, Plaintiffs in Error,
vs.
THE UNITED STATES OF AMERICA, Defendants in Error.

Transcript of Record.

In Error to the District Court of the United States of America in and for the Southern District of California, Southern Division.

b *Names and Addresses of Attorneys.*

For Plaintiffs in Error:

Miguel Estudillo, Esq., Covert Block, Riverside, California.
Theodore Martin, Esq., 918 Security Building, Los Angeles, California.

For Defendants in Error:

Albert Schoonover, Esq., United States Attorney, Los Angeles, California.
Dudley W. Robinson, Esq., Assistant United States Attorney, Los Angeles, California.

c UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the Judge of the District Court of the United States for the Southern District of California, Southern Division, Greeting:

Because in the record and proceedings, and also in the rendition of the judgment of a plea which is in the said District Court before you between Ambrosio Apapas, Cornelio Lubo, Francisco Lubo, Pablino Lubo, Pio Lubo, and Leonicio Lugo, plaintiffs in error, and the United States of America, defendants in error, a manifest error hath happened to the great damage of the said plaintiffs in error, Ambrosio Apapas, Cornelio Lubo, Francisco Lubo, Pablino Lubo, Pio Lubo, and Leonicio Lugo, as by their complaint appears, and it being fit that the error, if any there hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, you are hereby commanded, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this Writ so that you have the same at the City of Washington, District of Columbia, on the 21st day of August next, in the Supreme Court of the United States, to be then and there held; that the record and proceedings aforesaid being inspected, the said Supreme Court of the

United States may cause further to be done therein to correct that error, what of right and according to the law and customs of the United States should be done.

d Witness the Honorable Edward D. White, Chief Justice of the United States, this 23rd day of June, in the year of our Lord, one thousand nine hundred and thirteen, and of the Independence of the United States, the One hundred and thirty-seventh.

[Seal of the U. S. District Court, Southern Dist. of California.]

WM. M. VAN DYKE,
Clerk of the United States District Court
for the Southern District of California.

The above Writ of Error is hereby allowed.

OLIN WELLBORN, *Judge.*

I hereby certify that a copy of the within Writ of Error was on the 23rd day of June, 1913, lodged in the Clerk's Office of the said United States District Court for the Southern District of California, Southern Division, for the said defendants in error.

WM. M. VAN DYKE,
Clerk of the United States District Court
for the Southern District of California.

e [Endorsed:] 518 Crim. Supreme Court of the United States. Ambrosio Apapas, et al., Plaintiffs in Error, vs. The United States of America, Defendants in Error. Writ of Error. Filed June 23, 1913. Wm. M. Van Dyke, Clerk. By C. E. Scott, Deputy Clerk.

I hereby certify that a copy of the within Writ of Error was on the 23rd day of June, 1913 lodged in the Clerk's Office of the said United States District Court for the Southern District of California for the said defendants in error.

WM. M. VAN DYKE,
Clerk U. S. District Court, Southern
District of California,
By C. E. SCOTT, *Deputy Clerk.*

f UNITED STATES OF AMERICA,
Southern District of California, Southern Division, ss:

To the United States of America, Greeting:

You are hereby cited and admonished to be and appear at the Supreme Court of the United States, to be held at the City of Washington, in the District of Columbia, on the 21st day of August, A. D., 1913, pursuant to a Writ of Error on file in the Clerk's Office of the District Court of the United States for the Southern District of California, Southern Division, in that certain cause, numbered 518 Crim. in said District Court, wherein Ambrosio Apapas, Cor-

nelio Lubo, Francisco Lubo, Pablino Lubo, Pio Lubo, and Leonicio Lugo are plaintiffs in error, and you are defendants in error, to show cause if any there be why the judgment given, made and rendered against the said Ambrosio Apapas, Cornelio Lubo, Francisco Lubo, Pablino Lubo, Pio Lubo, and Leonicio Lugo, plaintiffs in error in the said Writ of Error mentioned, should not be corrected, and speedy justice should not be done to the parties in that behalf.

Witness the Honorable Olin Wellborn, United States District Judge for the Southern District of California, this 23rd day of June, in the year of our Lord, One thousand nine hundred and thirteen, and of the Independence of the United States the One Hundred and thirty-seventh.

OLIN WELLBORN,
United States District Judge for the Southern District of California.

g Received a copy of the within Citation this 24 day of June, 1913.

DUDLEY W. ROBINSON,
Ass't United States Attorney, Southern District of California.

h [Endorsed:] 518 Crim. Supreme Court of the United States. Ambrosio Apapas et al., Plaintiffs in Error, vs. The United States of America, Defendants in Error. Citation. Filed June 24, 1913. Wm. M. Van Dyke, Clerk, by C. E. Scott, Deputy Clerk.

i The answer of the Judge of the District Court of the United States of America, in and for the Southern District of California.

The record and all proceedings of the complaint whereof mention is within made, with all things touching the same, we certify under the seal of our said District Court, to the Supreme Court of the United States, in a certain schedule to this writ annexed, as within we are commanded.

By the Court:

[Seal of the U. S. District Court, Southern Dist. of California.]

WM. M. VAN DYKE, *Clerk.*

j Supreme Court of the United States.

AMBROSIO APAPAS, LEONICIO LUGO, PABLINO LUBO, CORNELIO LUBO, FRANCISCO LUBO, and PIO LUBO, Plaintiffs in Error,
vs.
THE UNITED STATES OF AMERICA, Defendants in Error.

Transcript of Record.

Upon Writ of Error to the United States District Court in and for the Southern District of California, Southern Division.

1 In the District Court of the United States of America in and for the Southern District of California, Southern Division.

No. 518, Crim.

THE UNITED STATES OF AMERICA, Plaintiffs,
vs.
AMBROSIO APAPAS, CHARLEY ARENAS, PATRICK CASERO, AGAPITO LUBO, Cornelio Lubo, Francisco Lubo, Pablino Lubo, Pio Lubo, Cervantes Lubo, and Leonicio Lugo, Defendants.

2 In the District Court of the United States in and for the Southern District of California, Southern Division.

At a stated term of Court, begun and holden at the City of Los Angeles, County of Los Angeles, within and for the Southern Division of the Southern District of California, on the second Monday in January, in the year of our Lord one thousand nine hundred and twelve.

The Grand Jurors of the United States of America, chosen, selected and sworn within and for the Division and District aforesaid, on their oath present:

That Ambrosio Apapas, Charlie Arenas, Patrick Casero, Agapito Lubo, Cornelio Lubo, Francisco Lubo, Pablino Lubo, Pio Lubo, Santos Lubo, and Leonicio Lugo, all being Indians, whose full and true names, other than as herein stated, are to the said Grand Jurors unknown, late of the Southern Division of the Southern District of California, heretofore, to wit, on the second day of May, in the year of our Lord one thousand, nine hundred and twelve, at, upon and within the limits of a United States Indian Reservation, known as Cahuilla Indian Reservation, in the County of Riverside, within the Southern Division of the Southern District of California, and within the jurisdiction of this Honorable Court, with force and arms in and upon William H. Stanley, a white person, feloniously, wilfully, deliberately, premeditatedly, and of their malice aforethought, did make an assault with a deadly weapon, to-wit, a revolver then and there held in the hands of them, the said Ambrosio Apapas, Charlie Arenas, Patrick Casero, Agapito Lubo, Cornelio Lubo, Francisco

Lubo, Pablino Lubo, Pio Lubo, Santos Lubo, and Leonicio Lugo, and then and there loaded and charged with gunpowder and
3 leaden bullets; and they, the said Ambrosio Apapas, Charlie Arenas, Patrick Casero, Agapito Lubo, Cornelio Lubo, Francisco Lubo, Pablino Lubo, Pio Lubo, Santos Lubo, and Leonicio Lugo, then and there having the said revolver, as aforesaid, the same being then and there loaded and charged, as aforesaid, with the intent to kill the said William H. Stanley, then and there feloniously, wilfully, deliberately, premeditatedly, and of their malice aforethought, did shoot off and discharge the said gun, at, against and upon the said William H. Stanley; and that they, the said Ambrosio Apapas, Charlie Arenas, Patrick Casero, Agapito Lubo, Cornelio Lubo, Francisco Lubo, Pablino Lubo, Pio Lubo, Lubo, Santos Lubo, and Leonirio Lugo, all Indians as aforesaid, at in said revolver, as aforesaid, by means of shooting off and discharging the said revolver, as aforesaid, did then and there feloniously, wilfully, of their malice aforethought and from a deliberate and premeditated design to effect the death of said William H. Stanley, strike, penetrate and wound the said William H. Stanley, in and upon the back, and in, upon and through the abdomen of the said William H. Stanley, then and thereby giving to the said William H. Stanley, with the leaden bullet aforesaid, a mortal wound, of which said mortal wound he, the said William H. Stanley, did suffer and languish and soon thereafter, to-wit, on the third day of May, in the year of our Lord, one thousand nine hundred and twelve, at said County of Riverside, State, Division and District aforesaid did die;

And so the Grand Jurors aforesaid, on their oath aforesaid, do say that said Ambrosio Apapas, Charlie Arenas, Patrick Casero, Agapito Lubo, Cornelio Lubo, Francisco Lubo, Pablino Lubo, Pio Lubo, Santos Lubo, and Leonicio Lugo, all Indians as aforesaid, at the time and in the manner hereinbefore set forth, did,
4 within a district of country under the exclusive jurisdiction of the United States, commit the crime of murder—,

Contrary to the form of the statutes of the United States in such case made and provided, and against the peace and dignity of the said United States.

5 Second Count.

And the Grand Jurors aforesaid, on their oath aforesaid, do further present:

That Ambrosio Apapas, Charlie Arenas, Patrick Casero, Agapito Lubo, Cornelio Lubo, Francisco Lubo, Pablino Lubo, Pio Lubo, Santos Lubo, and Leonicio Lugo, all being Indians, whose full and true names, other than as herein stated, are to the said Grand Jurors unknown, late of the Southern Division of the Southern District of California, heretofore, to-wit, on the second day of May, in the year of our Lord one thousand nine hundred and twelve, at, upon and within the limits of a United States Indian Reservation, known as Cahuilla Indian Reservation, in the County of Riverside, within the Southern Division of the Southern District of California, and within the jurisdiction of this Honorable Court, with force

and arms in and upon William H. Stanley, a white person, feloniously, wilfully, deliberately, premeditatedly and of their malice aforethought, did make an assault with a deadly weapon, to-wit, a revolver then and there held in the hand of the said Ambrosio Apapas, (whether the right or the left hand of the said Ambrosio Apapas being to the Grand Jury unknown,) and then and there loaded and charged with gunpowder and leaden bullets; and they, the said Ambrosio Apapas, Charlie Arenas, Patrick Casero, Agapito Lubo, Cornelio Lubo, Francisco Lubo, Pablino Lubo, Pio Lubo, Santos Lubo, and Leonicio Lugo, then and there having the said revolver, as aforesaid, the same being then and there loaded and charged, as aforesaid, with the intent to kill the said William H. Stanley, then and there feloniously, wilfully, deliberately, premeditatedly, and of their malice aforethought, did induce and procure the said Ambrosio Apapas to shoot off and discharge the said
6 revolver, at, against and upon the said William H. Stanley, and the said Ambrosio Apapas, with the intent to kill the said William H. Stanley then and there feloniously, wilfully, deliberately, premeditatedly, and of his malice aforethought, did shoot off and discharge the said revolver, at, against and upon the said William H. Stanley; and that they, the said Ambrosio Apapas, Charlie Arenas, Patrick Casero, Agapito Lubo, Cornelio Lubo, Francisco Lubo, Pablino Lubo, Pio Lubo, Santos Lubo, and Leonicio Lugo, with a leaden bullet so contained in said revolver, as aforesaid, by means of shooting off and discharging the said revolver, as aforesaid, did then and there feloniously, wilfully, of their malice aforethought, and from a deliberate and premeditated design to effect the death of said William H. Stanley, strike, penetrate and wound the said William H. Stanley, in and upon the back and in, upon and through the abdomen of him, the said William H. Stanley, then and thereby giving to the said William H. Stanley, with the leaden bullet aforesaid, a mortal wound, of which said mortal wound he, the said William H. Stanley, did suffer and languish and soon thereafter, to-wit, on the third day of May, in the year of our Lord, one thousand nine hundred and twelve, at said County of Riverside, State, Division and District aforesaid, did die;

And so the Grand Jurors aforesaid, on their oath aforesaid, do say that said Ambrosio Apapas, Charlie Arenas, Patrick Casero, Agapito Lubo, Cornelio Lubo, Francisco Lubo, Pablino Lubo, Pio Lubo, Santos Lubo, and Leonicio Lugo, all Indians as aforesaid, at the time and in the manner hereinbefore set forth, did, within a district of country under the exclusive jurisdiction of the United States, commit the crime of murder,—

7 Contrary to the form of the statutes of the United States in such case made and provided, and against the peace and dignity of the said United States.

8 Third Count.

And the Grand Jurors aforesaid, on their oath aforesaid, do further present:

That Ambrosio Apapas, an Indian, whose full and true name, other than as herein stated, is to the said Grand Jurors unknown, late of the Southern Division of the Southern District of California, heretofore, to-wit, on the second day of May, in the year of our Lord one thousand, nine hundred and twelve, at, upon and within the limits of a United States Indian Reservation, known as Cahuilla Indian Reservation, in the County of Riverside, within the Southern Division of the Southern District of California, and within the jurisdiction of this Honorable Court, with force and arms in and upon William H. Stanley, a white person, feloniously, wilfully, deliberately, premeditatedly, and of his malice aforethought, did make an assault with a deadly weapon, to-wit, a revolver then and there held in the hand of him, the said Ambrosio Apapas, (whether the right or the left hand of the said Ambrosio Apapas being to the said Grand Jurors unknown,) and then and there loaded and charged with gunpowder and leaden bullets; and he, the said Ambrosio Apapas, then and there having the said revolver, as aforesaid, the same being then and there loaded and charged, as aforesaid, with the intent to kill the said William H. Stanley, then and there feloniously, wilfully, deliberately, premeditately and of his malice aforethought, did shoot off and discharge the said revolver at, against and upon the said William H. Stanley; and that he, the said Ambrosio Apapas, with a leaden bullet so contained in said revolver, as aforesaid, by means of the shooting off and discharging the said revolver, as aforesaid, did then and there feloniously, wil-
9 fully, of his malice aforethought, and from a deliberate and premeditated design to effect the death of said William H. Stanley, strike, penetrate and wound the said William H. Stanley, in and upon the back, and in, upon and through the abdomen of him, the said William H. Stanley, then and thereby given to the said William H. Stanley, with the leaden bullet aforesaid, a mortal wound, of which said mortal wound he, the said William H. Stanley, did suffer and languish and soon thereafter, to-wit, on the third day of May, in the year of our Lord one thousand nine hundred and twelve, at said County of Riverside, State, Division and District aforesaid, did die;

And the Grand Jurors aforesaid, on their oath aforesaid, do further say:

That Charlie Arenas, Patrick Casero, Agapito Lubo, Cornelio Lubo, Francisco Lubo, Pablino Lubo, Pio Lubo, Santos Lubo, and Leonicio Lugo, all being Indians, whose full and true names, other than as herein stated, are to the said Grand Jurors unknown, late of the Southern Division of the Southern District of California, heretofore, to-wit, on the aforesaid second day of May, in the year of our Lord one thousand nine hundred and twelve, at, upon and within the limits of the aforesaid United States Indian Reservation, known as Cahuilla Indian Reservation, in the aforesaid County of Riverside, within the Southern Division of the Southern District of California, and within the jurisdiction of this Honorable Court, as aforesaid, did feloniously, wilfully, deliberately, premeditatedly, and of their malice aforethought, aid and abet the above named Ambrosio Apapas

in making the assault with a deadly weapon, to-wit, a revolver then and there held in the hand of the said Ambrosio Apapas, as above set forth, with force and arms in and upon the above named William H. Stanley, a white person, which revolver was then and
10 there loaded and charged with gunpowder and leaden bullets; and they, the said Charlie Arenas, Patrick Casero, Agapito Lubo, Cornelio Lubo, Francisco Lubo, Pablino Lubo, Pio Lubo, Santos Lubo, and Leonicio Lugo, did then and there feloniously, wilfully, deliberately, premeditatedly, and of their malice aforethought, counsel, command, induce and procure the said Ambrosio Apapas, with force and arms in and upon the said William H. Stanley, a white person, to make an assault with a deadly weapon, to-wit, a revolver then and there held in the hand of the said Ambrosio Apapas, as above set forth (which assault was made by the said Ambrosio Apapas as hereinbefore described,) and which revolver was then and there loaded and charged with gunpowder and leaden bullets; and (the said Ambrosio Apapas then and there having the said revolver, as aforesaid, the same being then and there loaded and charged, as aforesaid,) they, the said Charlie Arenas, Patrick Casero, Agapito Lubo, Cornelio Lubo, Francisco Lubo, Pablino Lubo, Pio Lubo, Santos Lubo, and Leonicio Lugo, with the intent to induce and procure the killing of the said William H. Stanley, then and there feloniously, wilfully, deliberately, premeditatedly, and of their malice aforethought, did counsel, command, induce and procure the said Ambrosio Apapas, to shoot off and discharge the said revolver, at, against and upon the said William H. Stanley, and then and thereupon the said Ambrosio Apapas did shoot off and discharge the said revolver, at, against and upon the said William H. Stanley, as above set forth; and they, the said Charlie Arenas, Patrick Casero, Agapito Lubo, Cornelio Lubo, Francisco Lubo, Pablino Lubo, Pio Lubo, Santos Lubo, and Leonicio Lugo, by means of shooting off and discharging the said revolver, as aforesaid, did then and there feloniously,
11 wilfully, of their malice aforethought, and from a deliberate and premeditated design to effect the death of said William H. Stanley, cause and procure a leaden bullet so contained in said revolver, as aforesaid, to strike, penetrate and wound, and then and there a leaden bullet so contained in said revolver, as aforesaid, did, by means of so shooting off and discharging said revolver, as aforesaid, then and there strike, penetrate and wound, the said William H. Stanley, in and upon the back, and in, upon and through the abdomen of him, the said William H. Stanley, then and thereby giving to the said William H. Stanley, with the leaden bullet aforesaid, a mortal wound, of which said mortal wound he, the said William H. Stanley, did suffer and languish and soon thereafter, to-wit, on the third day of May, in the year of our Lord one thousand nine hundred and twelve, at said county of Riverside, State, Division and District aforesaid, did die, as above set forth;

And so the Grand Jurors aforesaid, on their oath aforesaid, do say:

That said Ambrosio Apapas, Charlie Arenas, Patrick Casero, Agapito Lubo, Cornelio Lubo, Francisco Lubo, Pablino Lubo, Pio

Lubo, Santos Lubo, and Leonicio Lugo, all Indians as aforesaid, at the time and in the manner hereinbefore set forth, did, within a district of country under the exclusive jurisdiction of the United States, commit the crime of murder against the person of a human being, to-wit, William H. Stanley,—

Contrary to the form of the statutes of the United States in such case made and provided, and against the peace and dignity of the said United States.

A. I. McCORMICK,
United States Attorney.
DUDLEY W. ROBINSON,
Assistant United States Attorney.

12 (Endorsed:) No. 518 Crim. United States District Court, Southern District of California, Southern Division. The United States of America, vs. Ambrosio Apapas, Charlie Arenas, Patrick Casero, Agapito Lubo, Cornelio Lubo, Francisco Lubo, Pablino Lubo, Pio Lubo, Santos Lubo and Leonicio Lugo. Indictment for Viol. Secs. 273, 275 and 328 of Fed. Penal Code of 1910 Murder. A true bill. E. B. Tufts Foreman. Presented and filed in open court, this 6th day of July, A. D. 1912. Wm. M. Van Dyke Clerk by C. E. Scott, Deputy Clerk. —— —— United States Attorney. Names of witnesses examined before the said Grand Jury on finding the foregoing indictment: —.

13 UNITED STATES OF AMERICA,
Southern District of California, ss:

To the Marshal of the United States of America for the southern district of California, and his deputies, or any or either of them, Greeting:

[SEAL.]

Whereas, at a District Court of the United States of America, for the Southern District of California, begun and held at the City and County of Los Angeles, within and for the District aforesaid, on the 6th day of July, in the year of our Lord, one thousand nine hundred and Twelve, the said Grand Jurors in and for the said District, brought into the said Court a true bill of indictment against Charlie Arenas, Patrick Casero, Agapito Lubo, Cornelio Lubo, Pablino Lubo, Pio Lubo, Santos Lubo, Leonicio Lugo for Violation of Secs. 273, 275 and 328 Fed. Penal Code of 1910 (Murder) as by the same Indictment, now remaining on file and of record in said Court, will more fully appear; to which Indictment the said above named defendants have not yet appeared or pleaded:

Now, therefore, You are hereby commanded, in the name of the President of the United States of America, to apprehend the said above named defendants and each of them, bring before the said Court, at the United States District Court Room, in the City and County of Los Angeles, to answer the Indictment aforesaid.

Witness: The Hon. Olin Wellborn, Judge of the said District

Court, and the Seal thereof, at the City and County of Los Angeles, the 6th day of July, A. D. 1912.

Attest:

WM. M. VAN DYKE, *Clerk.*
By E. H. OWEN, *Deputy Clerk.*

A. I. McCORMICK,
U. S. Attorney.

14 Marshal's Office.

UNITED STATES OF AMERICA,
Southern District of California:

In obedience to the Warrant I have the bodies of the said Pio Lubo 7/10 Charlie Arenas 7/10 Agapito Lubo 7/10 Cornelio Lubo 7/10 Patrick Casero 7/10 Pablino Lubo 7/10 Cervantes Lubo 7/10 Leonicio Lugo, 7/15 before the Honorable the District Court of the United States, in and for the Southern District of California, this — day of July, A. D. 1912.

LEO V. YOUNGWORTH,
U. S. Marshal.
By J. F. DURLIN,
Deputy U. S. Marshal.

(Endorsed:) Marshal's Criminal Docket No. 4623. No. 518. United States District Court Southern District of California Southern Division. The United States of America vs. Charlie Arenas et al. Bench warrant. Without Bail. A. I. McCormick, U. S. Attorney. Filed July 16th, 1912. Wm. M. Van Dyke, Clerk by Virgil W. Owen, Deputy Clerk.

15 *Copy Pleas.*

At a Stated Term, to wit, the July Term, A. D. 1912, of the District Court of the United States of America in and for the Southern District of California, Southern Division, Held at the Courtroom Thereof, in the City of Los Angeles, on Monday, the 30th Day of December, in the Year of Our Lord One Thousand Nine Hundred and Twelve.

Present: The Honorable Olin Wellborn, District Judge.

No. 518, Crim. S. D.

THE UNITED STATES OF AMERICA, Plaintiffs,
vs.
AMBROSIO APAPAS et al., Defendants.

This cause coming on this day for the entry of defendants' pleas; Dudley W. Robinson, Esq., Assistant U. S. Attorney, appearing as counsel for the United States; defendants being present, in custody

of the U. S. Marshal, with their counsel, Miguel Estudillo, Esq., and S. M. Johnstone, Esq.; and defendant Ambrosio Apapas having, by permission of the court, pleaded through his counsel, Miguel Estudillo, Esq., not guilty as charged in the indictment herein which plea is now, by order of the Court hereby entered herein; and Charlie Arenas, Agapito Lubo, Cornelio Lubo, Francisco Lubo, Pablino Lubo, Pio Lubo, and Cervantes Lubo, indicted herein as Santos Lubo, having respectively pleaded not guilty as charged in said indictment, through Leonicio Lugo, acting as interpreter of the Indian and English languages, which pleas are now by order of the court hereby entered herein; and Patrick Casero and Leonicio Lugo having respectively pleaded not guilty as charged in said indictment, which pleas are now by order of the court hereby entered herein; it is thereupon, good cause appearing therefor, ordered that said cause be, and the same hereby is continued for the term for the setting of the same down for the trial of said defendants. Defendants are remanded to the custody of the U. S. Marshal.

16 *Copy Minutes of Trial.*

At a Stated Term, to wit, the January Term, A. D. 1913, of the District Court of the United States of America in and for the Southern District of California, Southern Division, Held at the Court-room Thereof, in the City of Los Angeles, on Tuesday, the 4th Day of March, in the Year of Our Lord One Thousand Nine Hundred and Thirteen.

Present: The Honorable Frank H. Rudkin, District Judge.

No. 518, Crim. S. D.

THE UNITED STATES OF AMERICA, Plaintiffs,
vs.
AMBROSIO APAPAS, et al., Defendants.

This cause coming on this day to be tried before the court and a jury to be impanelled; Dudley W. Robinson, Esq., Assistant U. S. Attorney, appearing as counsel for the United States; defendants being present in custody of the U. S. Marshal, with their counsel, Miguel Estudillo, Esq., and S. M. Johnstone, Esq., and both sides having answered ready; and John P. Doyle having been sworn as shorthand reporter of the testimony and proceedings; and the court having ordered that the trial proceed, and that a jury be impanelled herein; and the Government having offered a notice of list of witnesses and jurors, a notice of additional witnesses and another notice of additional witnesses, which are filed on behalf of the United States; and the following twelve (12) term trial jurors having been duly drawn, called and sworn on voir dire, to wit: Wm. R. Rowland, Frank C. Perrine, John A. Henderson, W. S. Pulver, W. B. Vorwerk, Edwin S. Rowley, Robert C. Conant, Albert

A. Allen, Russell C. Thompson, R. S. Persons, Edward T. Harden and Lewell S. Chapman; and said jurors having been examined by
Dudley W. Robinson, Esq., Assistant U. S. Attorney, of
17 counsel for the United States, and by Miguel Estudillo, Esq.,
of counsel for defendants; and Lowell S. Chapman having been excused by the Court, with the consent of counsel for both sides, on account of business reasons; and Eugene L. Berger, a term trial juror, having been duly drawn, called, sworn on voir dire and examined by counsel for the Government and by counsel for defendant; and John A. Henderson having been challenged for cause by the Government, which challenge is allowed by the court and the juror excused; and Robert Butcher, a term trial juror, having been duly drawn, called, sworn on voir dire and examined by counsel for the Government and by counsel for defendants; and W. S. Pulver having been challenged for cause by defendants, which challenge is allowed by the court and the juror excused; and F. M. Reishe, a term trial juror, having been duly drawn, called, sworn on voir dire and examined by counsel for the Government and by counsel for defendants; and Albert A. Allen having been challenged for cause by defendants, which challenge is allowed by the court and the juror excused; and William H. Cline, a term trial juror, having been duly drawn, called, sworn on voir dire and examined by counsel for the Government, and by counsel for defendants; and the twelve (12) jurors now in the box having been passed for cause by both sides; and the court having admonished the jurors, that, during the recess of court, they are not to talk with each other about this case or anything connected with this case, nor permit other persons to talk with them, nor themselves talk with other persons about this case or anything connected with it; and court having, at the hour of 12:06 o'clock, P. M., taken a recess until the hour of 2 o'clock, P. M., of this day;

And now, at the hour of 2 o'clock, P. M., court having reconvened; and defendants, counsel and shorthand reporters being present as
before; and the roll of the jurors having been called, and
18 all the jurors in the box and all other term trial jurors not
heretofore excused being present; and Wm. R. Rowland having been challenged peremptorily by the United States and excused; and Louis Henze, a term trial juror, having been duly drawn, called, sworn on voir dire, examined by counsel for the Government and by counsel for defendants, and said juror having thereupon been challenged for cause by defendants, which challenge is allowed by the court and the juror excused; and J. R. Halborsen, a term trial juror, having been duly drawn, called, sworn on voir dire, examined by counsel for the Government and by counsel for defendant and passed for cause; and Edwin S. Rowley having been challenged peremptorily by defendants and excused; and Alex R. Thompson, a term trial juror, having been duly drawn, called, sworn on voir dire, examined by counsel for the Government and by counsel for defendants and passed for cause; and J. R. Halborsen having been challenged peremptorily by the Government and excused; and Howard Raines, a term trial juror, having been duly drawn, called, sworn

on voir dire, examined by counsel for * * * for the Government and by counsel for defendants and passed for cause, and said juror having thereupon been challenged peremptorily by defendants and excused; and Geo. A. Leach, a term trial juror, having been duly drawn, called, sworn on voir dire, examined by counsel for the Government and by counsel for defendants and passed for cause; and Edward T. Harden having been challenged peremptorily by defendants and excused; and Frank M. Lee, a term trial juror, having been duly drawn, called, sworn on voir dire, examined by counsel for the Government and by counsel for defendants and passed for cause; and W. B. Vorwerk having been challenged peremptorily by defendants and excused; and D. M. Day, a term trial juror, having been duly drawn, called, sworn on voir dire, examined by coun-

for the Government and by counsel for defendants and
19 passed for cause; and Alex R. Thompson having been challenged peremptorily by defendants and excused; and R. Fred Skellenger, a term trial juror, having been duly drawn, called, sworn on voir dire, examined by counsel for the Government and by counsel for defendants and passed for cause; and Robert C. Conant having been challenged peremptorily by defendants and excused; and Daniel R. McRae, a term trial juror, having been duly drawn, called, sworn on voir dire, examined by counsel for the Government and by counsel for defendants and passed for cause, and said juror having thereupon been challenged peremptorily, by defendants and excused; and R. H. Hewitt, a term trial juror, having been duly drawn, called, sworn on voir dire, examined by counsel for the Government and by counsel for defendants, and said juror having thereupon been challenged for cause by defendants, which challenge is allowed by the court and the juror excused; and R. H. Herron, a term trial juror, having been duly drawn, called, sworn on voir dire, examined by counsel for the Government and by counsel for defendants and passed for cause, and said juror having thereupon been challenged peremptorily by the defendants and excused; and Joseph F. Huston, a term trial juror, having been duly drawn, called, sworn on voir dire, examined by counsel for the Government and by counsel for defendants and passed for cause; and Frank M. Lee having been challenged peremptorily by defendants and excused; and Ygnacio L. Mott, a term trial juror, having been duly drawn, called, sworn on voir dire, examined by counsel for the Government and by counsel for defendants and passed for cause; and Joseph F. Huston having been challenged peremptorily by defendants and excused; and Frank Odemar, a term trial juror, having been duly drawn, called, sworn on voir dire and examined by counsel for the Government and by counsel for defendants, and said juror having thereupon been challenged for cause by the Government which

challenge is allowed by the court and the juror excused; and
20 it appearing to the court that there are now only eleven (11) jurors in the box, and that the entire panel of term trial jurors has been exhausted, it is thereupon by the court ordered that a Special Venire issue forthwith from the Clerk's Office of this Court, pursuant to law, for the summoning of ten (10) persons from the

bystanders for impanel/ment in this cause, said venire to be made returnable in this Court on Wednesday, the 5th day of March, A. D. 1913, at 10:30 o'clock, A. M.; and the court having admonished the jurors remaining in the box that, during the recess of the court, they are not to permit other persons to approach them and talk with them about this case or anything connected therewith, nor themselves talk with other persons nor with each other about this case or anything connected with said case; it is ordered that said jurors be, and they hereby are excused until Wednesday, the 5th day of March, A. D. 1913, at 10:30 o'clock, A. M.; and thereupon, at the hour of 4:50 o'clock, P. M., it is ordered that this cause be, and the same hereby is continued until Wednesday, the 5th day of March, A. D. 1913, at 10:30 o'clock, A. M., for further trial. Defendants are remanded to the custody of the U. S. Marshal.

21 At a Stated Term, To wit: The January Term, A. D. 1913, of the District Court of the United States of America in and for the Southern District of California, Southern Division, Held at the Court-room, in the City of Los Angeles, on Wednesday, the 5th Day of March, in the Year of Our Lord One Thousand Nine Hundred and Thirteen.

Present: The Honorable Frank H. Rudkin, District Judge.

No. 518, Crim. S. D.

THE UNITED STATES OF AMERICA, Plaintiffs,
vs.
AMBROSIO APAPAS et al., Defendants.

This cause coming on this day for the further impanel/ment of a jury and for trial of the defendants before the court and a jury to be impanelled; Dudley W. Robinson, Esq., Assistant U. S. Attorney, appearing as counsel for the United States; defendants being present, in custody of the U. S. Marshal, with their counsel, Miguel Estudillo, Esq., and S. M. Johnstone, Esq.; John P. Doyle being present as shorthand reporter of the testimony and proceedings; and the roll of the eleven (11) jurors in the box having been called, and all being present except Wm. H. Cline, who comes in later; and the nine jurors summoned by special venire from the bystanders and found competent and qualified and not excused being present; and the names of said nine special veniremen having been placed in the jury box; and H. Vanburgen, a special venireman, having been duly drawn, called, sworn on voir dire and examined by counsel for the Government and by counsel for defendants, and said juror having thereupon been challenged for cause by defendants, which challenge is allowed by the court and the juror excused; and L. D. Smith, a special venireman, having been duly drawn, called,
22 sworn on voir dire and examined by counsel for the Government and by counsel for defendants, and said juror having thereupon been challenged for cause by the Government, which chal-

lenge is allowed by the court and the juror excused; and H. L. Suydan, a special venireman, having been duly drawn, called, sworn on voir dire, examined by counsel for the Government and by counsel for defendants and passed for cause; and Russell C. Thompson having been challenged peremptorily by defendants and excused; and Geo. F. Houser, a special venireman, having been duly drawn, called sworn on voir dire, examined by counsel for the Government and by counsel for defendants and passed for cause; and the twelve (12) jurors now in the box having been accepted by counsel for the Government and by counsel for defendants and sworn in a body as the jury to try this cause, said jury as so impanelled and sworn consisting of the following-named persons, to wit:

Jury.

1. Geo. A. Leach,
2. Frank C. Perrine,
3. Robert Butcher,
4. F. M. Reishe,
5. D. M. Day,
6. R. Fred Skellenger,
7. William H. Cline,
8. Geo. F. Houser,
9. R. S. Persons,
10. Ygnacio L. Mott,
11. Eugene L. Berger,
12. H. L. Suydan;

and the remaining special veniremen having been excused and directed to report to the U. S. Marshal for their compensation; and the jurors having been admonished by the court that, during the progress of this trial, they are not to permit other persons to talk with them about this case or anything connected with this case, nor themselves talk with other persons about this case or anything connected therewith, and that, until said case is finally given them for consideration under the instructions of the court, they are
23 not to talk with each other about this case or anything connected with this case; and court having thereupon, at the hour of 11:25 o'clock, A. M., taken a recess for ten (10) minutes; and now, at the hour of 11:35 o'clock, A. M., court having reconvened; and defendants, counsel and shorthand reporter being present as before; and counsel having stipulated that the jury are present; and the jurors all being present; and, on motion of Dudley W. Robinson, Esq., Assistant U. S. Attorney, of counsel for the United States, and also at the request of Miguel Estudillo, Esq., of counsel for the defendants, the rule as to witnesses having been invoked, it is ordered that all witnesses herein be, and they hereby are excluded from the court room except when present on the witness stand for the purpose of giving their testimony; and all the English speaking witnesses having been sworn and having been admonished not to talk to other people about this case before testifying and to remain within call on retiring, and having left the court room; and Gabriel Costa having been sworn as interpreter of the Indian (Cahuilla) and English languages; and all the Indian witnesses having been sworn through interpreter Gabriel Costa and having been admonished not to talk to other people about this case before testifying and to remain within call on retiring, and having left the court room; and Dudley W. Robinson, Esq., Assistant U. S. Attorney, of

counsel for the United States, having made a statement to the jury of what the Government expects to prove; and the first and third counts of the indictment having been read to the jury by the Clerk, the reading of the second count of the indictment being omitted by consent of counsel; and the pleas of not guilty of the defendants having been stated to the jury by the Clerk; and Dr. C. E. Arnold having been called and having heretofore been sworn as a witness on behalf of the United States, and having given his testimony; and, in connection with the testimony of said witness, the Gov-
24 ernment having offered the following exhibits, which are admitted in evidence on behalf of the United States, to wit: U. S. Ex. 1, leaden bullet taken from the body of W. H. Stanley; U. S. Ex. 2, leaden bullet taken from the body of Selso Serrano; and, also in connection with the testimony of said witness, the Government having offered for identification the dying statement of W. H. Stanley, which is for identification marked U. S. Ex. 3; and Dr. H. R. Martin having been called and having heretofore been sworn as a witness on behalf of the United States, and having given his testimony; and the jury having been given the usual admonition by the court; and court, at the hour of 1:12 o'clock, P. M., having taken a recess until the hour of 3 o'clock, P. M., of this day;

And now, at the hour of 3 o'clock P. M., court having reconvened; and defendants, counsel and shorthand reporter being present as before; and counsel having stipulated that the jury are present; and the jurors all being present in court; and Mrs. F. V. Stevens having been called and sworn as a witness on behalf of the United States, and having given her testimony; and, in connection with the testimony of said witness, the Government having offered two photographs, which are admitted in evidence on behalf of the United States as U. S. Ex. 4 and U. S. Ex. 4*a*; and Mrs. W. H. Stanley and Frank Wilson having been called and sworn as witnesses on behalf of the United States, and having given their testimony; and, in connection with said testimony, the Government having offered a Revolver, which is admitted in evidence on behalf of the United States, as U. S. Ex. 5; and, also in connection with said testimony, the Government having offered for identification four empty and two loaded cartridges, which together are for identification marked U. S. Ex. 6; and H. F. Nelson having been called and having been heretofore sworn as a witness on behalf of the United States, and having
25 given his testimony; and the jury, at the hour of 4:30 o'clock P. M., having been excused until Thursday, the 6th day of March, 1913, at 10:30 o'clock, A. M.; and the admissibility of the dying statement of W. H. Stanley, heretofore offered and marked for identification as U. S. Ex. 3 having been argued, on behalf of defendants, by Miguel Estudillo, Esq., of counsel for defendants, and on behalf of the Government by Dudley W. Robinson, Esq., Assistant U. S. Attorney, of counsel for the United States, and on behalf of defendants in reply by S. M. Johnstone, Esq., of counsel for defendants; it is, at the hour of 5 o'clock, P. M., ordered that this cause be, and the same hereby is continued until Thursday, the 6th day of March, 1913, at 10:30 o'clock, A. M., for further trial. Defendants are remanded to the custody of the U. S. Marshal.

26 At a Stated Term, To Wit: The January Term, A. D. 1913, of the District Court of the United States of America, in and for the Southern District of California, Southern Division, Held at the Court-room Thereof, in the City of Los Angeles, on Thursday, the 6th Day of March, in the Year of Our Lord One Thousand Nine Hundred and Thirteen.

Present: The Honorable Frank H. Rudkin, District Judge.

No. 518, Crim. S. D.

THE UNITED STATES OF AMERICA, Plaintiffs,
vs.
AMBROSIO APAPAS et al., Defendants.

This cause coming on this day to be further tried before the court and a jury heretofore duly impanelled herein; Dudley W. Robinson, Esq., Assistant U. S. Attorney, appearing as counsel for the United States; defendants being present in custody of the U. S. Marshal, with their counsel, Miguel Estudillo and S. M. Johnstone, Esqs.; John P. Doyle and Monroe H. Conley, being present as shorthand reporters of the testimony and proceedings; and the calling of the roll of the jury having been waived by consent, counsel stipulating that the jury are present; and the jurors all being present in court; and Francis A. Swayne, a witness heretofore sworn, having been called as a witness on behalf of the United States, and having given his testimony; and Mrs. W. H. Stanley, a witness on behalf of the United States, having been recalled for further examination, and having given her testimony; and, in connection with the testimony of said witness, the Government having offered the following exhibits, which are admitted in evidence on behalf of the United States, to wit: U. S. Exhibit 7, Letter of Oct. 6, 1911, from Second Assistant Commissioner of Indian Affairs to Leonicio Lubo;
27 U. S. Exhibit 7*a*, letter of Oct. 12, 1911, addressed to Leonicio Lugo; U. S. Exhibit 8, Letter of Oct. 25, 1911, to Commissioner of Indian Affairs and affidavit of Tiopilo Pa; U. S. Exhibit 9, Letter of Feb. 20, 1912, from Second Assistant Commissioner to Leonicio Lugo; and U. S. Exhibit 9*a*, Letter of Feb. 26, 1912, addressed to Leonicio Lugo; and the court having given the jury the usual admonition; and court, at the hour of 11:25 o'clock, A. M., having taken a recess until the hour of 2 o'clock, P. M., of this day;

And now, at the hour of 2 o'clock, P. M., court having reconvened; and defendants, counsel and shorthand reporters being present as before; and counsel having waived the calling of the roll of the jury, stipulating that the jurors are present; and the jurors all being present in court; and Mrs. W. H. Stanley, a witness on behalf of the United States, being on the stand for further examination, and having given her testimony; and Ada L. Light and Arnold Stanley having been called and sworn as witnesses on behalf of the United States, and having given their testimony; and Regina Rios and Rose Serrano, heretofore sworn as witnesses herein, having been

called as witnesses on behalf of the United States, and having given their testimony; and Anna Maria Casero having been called and sworn as a witness on behalf of the United States, and having given her testimony through R. J. Rominguez, court interpreter of the Spanish and English languages; and court, at the hour of 3:40 o'clock, P. M., having taken a recess for 10 minutes; and now, at the hour of 3:50 o'clock, P. M., court having reconvened; and defendants, counsel and shorthand reporter being present as before; and the jurors all being present in court; and Louis Majel having been called and sworn as a witness on behalf of the United States, and having given his testimony, and, in conection with the testimony of said witness, the Government having offered a Certificate
28 of Marriage, which is admitted in evidence on behalf of the United States as U. S. Exhibit 10; and Antonio S. Contreros having been called and sworn as a witness on behalf of the United States, and having given his testimony; it is now, at the hour of 5 o'clock, P. M., ordered that said cause be, and the same hereby is continued until Friday, the 7th day of March, 1913, at 10.30 o'clock, A. M.

29 At a Stated Term, To Wit: The January Term, A. D. 1913, of the District Court of the United States of America, in and for the Southern District of California, Southern Division, Held at the Court-room Thereof, in the City of Los Angeles, on Friday, the 7th Day of March, in the year of Our Lord One Thousand Nine Hundred and Thirteen.

Present: The Honorable Frank H. Rudkin, District Judge.

No. 518, Crim. S. D.

THE UNITED STATES OF AMERICA, Plaintiffs,
vs.
AMBROSIO APAPAS et al., Defendants.

This cause coming on this day to be further tried before the court and a jury heretofore duly impanelled herein; Dudley W. Robinson, Esq., Assistant U. S. Attorney, appearing as counsel for the United States; defendants being present in custody of the U. S. Marshal, with their counsel, Miguel Estudillo, Esq., and J. M. Johnstone, Esq.; and counsel having stipulated that the jury are present; and the jurors all being present in court; and J. F. Durlin having been called and sworn as a witness on behalf of the United States, and having given his testimony; and, in connection with the testimony of said witness, the United States having offered 4 empty and 2 loaded cartridges, heretofore offered and marked for identification U. S. Ex. 6, which are admitted in evidence on behalf of the United States as U. S. Ex. 6; and Condino Hopkins having been sworn as interpreter of the Cahuilla Indian and English languages; and John Largo having been called and sworn as a witness on behalf of the United States, and having given his testimony in part through said

interpreter Hopkins and in part in the English language; and court, at the hour of 12:30 o'clock P. M., having taken a recess until the hour of 2:30 o'clock, P. M., of this day—

30 And now, at the hour of 2:30 o'clock, P. M., court having reconvened; and defendants, counsel and shorthand reporters being present as before; and counsel having waived jury call and stipulated that the jury are present; and the jurors all being present in court; and John Largo, a witness on behalf of the United States, being on the stand for further examination and having given his testimony without an interpreter; and Celso Serrano, heretofore sworn as a witness herein, having been called as a witness on behalf of the United States, and having given his testimony; and, in connection with said testimony, the Government having offered the following exhibits, which are admitted in evidence on behalf of the United States, to wit: U. S. Ex. 11, photograph; and U. S. Ex. 12, Revolver; it is, at the hour of 5 o'clock, P. M., by the court ordered that said cause be, and the same hereby is continued until Monday, the 10th day of March, 1913, at 2 o'clock, P. M., until which time the jury are excused.

31 At a Stated Term, To wit: The January Term, A. D. 1913, of the District Court of the United States of America, in and for the Southern District of California, Southern Division, Held at the Court-room Thereof, in the City of Los Angeles, on Monday, the 10th Day of March, in the Year of Our Lord One Thousand Nine Hundred and Thirteen.

Present: The Honorable Frank H. Rudkin, District Judge.

No. 518, Crim. S. D.

THE UNITED STATES OF AMERICA, Plaintiffs,
vs.
AMBROSIO APAPAS et al., Defendants.

This cause coming on at this time to be further tried before the court and a jury heretofore duly impanelled herein; Dudley W. Robinson, Esq., Assistant U. S. Attorney, appearing as counsel for the United States; defendants being present in custody of the U. S. Marshal, with their counsel, Miguel Estudillo, Esq., and S. M. Johnstone, Esq.; John P. Doyle, and Monroe H. Conley being present as shorthand reporters of the testimony and proceedings; and the calling of the roll of the jury having been waived, counsel stipulating that the jury are present; and the jurors all being present in court; and Francisco Lugo, heretofore sworn as a witness herein, having been called as a witness on behalf of the United States, and having given his testimony through R. J. Dominguez, court interpreter of the Spanish and English languages; and Clarence E. Chambers having been called and sworn as a witness on behalf of the United States, and having given his testimony; and Adolf Lugo,

heretofore sworn as a witness herein, having been called as a witness on behalf of the United States, and having given his testimony; and, in connection with the testimony of said witness, the
32 Government having offered a phorograph from inside the Indian School, which is admitted in evidence on behalf of the United States, as U. S. Ex. 13; and Richard C. Stevens, having been called and sworn as a witness on behalf of the United States, and having given his testimony; and, in connection with the testimony of said witness, the Government having offered the following exhibits, which are admitted in evidence on behalf of the United States, to wit: U. S. Ex. 13*a*, Photograph of Inside Indian School; U. S. Ex. 13*b*, Photograph of range and table; and U. S. Ex. 13*c*, photograph of room; and Carl A. Pederson having been called and sworn as a witness on behalf of the United States, and having given his testimony; and, in connection with the testimony of said witness, the United States having offered a coat for identification, which is for identification marked U. S. Ex. 14, and having offered a leaden bullet, which is admitted in evidence on behalf of the United States as U. S. Ex. 15; and the court having given the jury the usual admonition; it is, at the hour of 5:25 o'clock, P. M., ordered that this cause be, and the same hereby is continued until Tuesday, the 11th day of March, 1913, at 10:30 o'clock, A. M., for further trial, until which time the jury are excused. Defendants are remanded to the custody of the U. S. Marshal.

33 At a Stated Term, To wit: The January Term, A. D., 1913, of the District Court of the United States of America, in and for the Southern District of California, Southern Division, Held at the Court-room Thereof, in the City of Los Angeles, on Tuesday, the 11th Day of March, in the Year of Our Lord One Thousand Nine Hundred and Thirteen.

Present: The Honorable Frank H. Rudkin, District Judge.

No. 518, Crim. S. D.

THE UNITED STATES OF AMERICA, Plaintiffs,
vs.
AMBROSIO APAPAS et al., Defendants.

This cause coming on this day to be further tried before the court and a jury heretofore duly impanelled herein; Dudley W. Robinson, Esq., Assistant U. S. Attorney, appearing as counsel for the United States; defendants being present in custody of the U. S. Marshal, with their counsel, Miguel Estudillo, Esq., and J. M. Johnstone, Esq.; John P. Doyle and Monroe H. Conley being present as shorthand reporters of the testimony and procedings; and counsel having stipulated that the jury are present and waived roll call of the jury; and the jurors all being present in court; and Carl Pederson, a witness on behalf of the United States, being on the stand for further examination, and having given his testimony; and, in connection

with the testimony of said witness, a coat, heretofore offered and marked for identification U. S. Ex. 14, having been offered and admitted in evidence on behalf of the United States, and Celso Serrano, a witness on behalf of the United States, having been recalled for further cross examination, and having given his testimony; and the Government having rested; and the jury, at the hour of 11:05 o'clock, A. M., having been excused from the court room
34 during the presentation and argument of certain motions; and Miguel Estudillo, Esq., of counsel for defendants, having moved that all evidence herein with reference to defendant Patrick Casero be stricken out, and having argued said motion in support thereof, and said counsel, Miguel Estudillo, Esq., having moved that all evidence herein with reference to all other defendants except defendant Ambrosio Apapas be stricken out, and having argued said motion in support thereof, and both said motions having been argued, in opposition thereto, by Dudley W. Robinson, Esq.; Assistant U. S. Attorney, of counsel for the United States, and having been further argued, in support thereof, by Miguel Estudillo, Esq., and S. M. Johnstone, Esq., of counsel for defendants, and said motions having been submitted to the court for its consideration and decision; it is now by the court ordered that the motion that all evidence herein with reference to defendant Patrick Casero be stricken out and also the motion that all evidence herein with reference to all other defendants except defendant Ambrosio Apapas be stricken out be, and each of said motions hereby is denied; and Miguel Estudillo, Esq., of counsel for defendants, having moved that the question of the insanity of defendant Ambrosio Apapas be submitted to a separate jury; and said motion having been argued, in support thereof, by Miguel Estudillo, Esq., of counsel for defendants, and in opposition thereto by Dudley W. Robinson, Esq., Assistant U. S. Attorney, of counsel for the United States, and in support thereof in reply by Miguel Estudillo, Esq., of counsel for defendants; and said motion having been submitted to the court for its consideration and decision; it is now ordered that the question of the insanity of defendant Ambrosio Apapas be submitted to the trial jury now impanelled herein; and the jury, at the hour of 11:35 o'clock, A. M., having been recalled into court; and counsel
35 having stipulated that the jury are present and waived roll call of the jury; and the jurors all being present in court; and Miguel Estudillo, Esq., of counsel for defendants, having made a statement to the jury of what defendants expect to prove; and Patrick Casero, one of the defendants, having been called and sworn as a witness on behalf of defendants, and having given his testimony; and court, at the hour of 12 o'clock, M., having taking a recess until the hour of 2 o'clock, P. M., of this day;

And now, at the hour of 2 o'clock P. M., court having reconvened; and defendants, counsel and shorthand reporters being present as before; and counsel having stipulated that the jury are present and having waived roll call of the jury; and all the jurors being present in court; and Patrick Casero, one of the defendants, and a witness in behalf of defendants, being on the stand for further examination,

and having given his testimony; and court, at the hour of 3:05 o'clock, P. M., having taken a recess for 10 minutes; and now, at the hour of 3:15 o'clock, P. M., court having reconvened; and defendants, counsel and shorthand reporter being present as before; and counsel having stipulated that the jury are present and having waived roll call of the jury; and the jurors all being present in court; and Patrick Casero, one of the defendants and a witness on behalf of defendants, being on the stand for further examination, and having given his testimony; and Pio Lubo and Pablino Lubo, two of the defendants having been called and sworn as witnesses on behalf of defendants, and having been given their testimony through Dondino Hopkins, interpreter of the Cahuilla Indian and the English languages; and the court having given the jury the usual admonition; it is, at the hour of 5 o'clock, P. M., ordered that said cause be, and the same hereby is continued until Wednesday, the 12th day of March, 1913, at 10:30 o'clock, A. M., for further trial, until which time the jurors are excused. Defendants are remanded to the custody of the U. S. Marshal.

36 At a Stated Term, To wit: The January Term, A. D. 1913, of the District Court of the United States of America, in and for the Southern District of California, Southern Division, Held at the Court-room Thereof, in the City of Los Angeles, on Wednesday, the 12th day of March, in the Year of Our Lord One Thousand Nine Hundred and Thirteen.

Present: The Honorable Frank H. Rudkin, District Judge.

No. 518, Crim. S. D.

THE UNITED STATES OF AMERICA, Plaintiffs,
vs.
AMBROSIO APAPAS et al., Defendants.

This cause coming on this day to be further tried before the court and a jury heretofore duly impanelled herein: Dudley W. Robinson, Esq., Assistant U. S. Attorney, appearing as counsel for the United States; defendants being present, in custody of the U. S. Marshal, with their counsel, Miguel Estudillo, Esq., and S. M. Johnstone, Esq.; John P. Doyle and Monroe H. Conley being present as shorthand reporters of the testimony and proceedings; and counsel having stipulated that the jury are present and waived the roll call of the jury; and the jurors all being present in court; and Pablino Lubo, one of the defendants, and a witness on behalf of defendants, being on the stand for further examination, and having given his testimony through Condino Hopkins, interpreter of the Cahuilla Indian and English languages; and Cornelio Lubo, one of the defendants, having been called and sworn as a witness on behalf of defendants, and having given his testimony through said interpreter Hopkins; and the court having given the jury the usual ad-

monition; and court, at the hour of 12 o'clock, M., having taken a recess until the hour of 2 o'clock, P. M., of this day;

37 And now, at the hour of 2 o'clock, P. M., court having reconvened; and defendants, counsel and shorthand reporters being present as before; and counsel having stipulated that the jury are present, and having waived roll call of the jury; and the jurors all being present in court and Cornelio Lubo, one of the defendants, and a witness on behalf of defendants, being on the stand for further examination, and having given his testimony through said interpreter Hopkins and Agapito Lubo, one of the defendants, having been called and sworn as a witness on behalf of defendants, and having given his testimony through said interpreter Hopkins; and court, at the hour of 3:15 o'clock P. M., having taken a recess for 10 minutes; and now, at the hour of 3:25 o'clock P. M., court having reconvened; and defendants, counsel and shorthand reporters being present as before; and counsel having stipulated that the jury are present and waived roll call of the jury; and the jurors all being present in court; and Santos Lubo, a witness heretofore sworn herein, having been called as a witness on behalf of defendants, and having given his testimony through said interpreter Hopkins; and Mrs. Refugio Apapas, heretofore sworn as a witness herein, having been called as a witness on behalf of defendants, and having given her testimony through said interpreter Hopkins; and Cervantes Lubo, one of the defendants (indicated herein as Santos Lubo), having been called and sworn as a witness on behalf of defendants, and having given his testimony through said interpreter Hopkins; it is now, at the hour of 5 o'clock, P. M., ordered that said cause be, and the same hereby is continued until Thursday, the 13th day of March, 1913, at 10:30 o'clock, A. M., for further trial, until which time the jurors are excused. Defendants are remanded to the custody of the U. S. Marshal.

38 At a Stated Term, To wit: The January Term, A. D. 1913, of the District Court of the United States of America, in and for the Southern District of California, Southern Division, Held at the Court-room Thereof, in the City of Los Angeles, on Thursday, the 13th day of March, in the Year of Our Lord One Thousand Nine Hundred and Thirteen.

Present: The Honorable Frank H. Rudkin, District Judge.

No. 518, Crim. S. D.

THE UNITED STATES OF AMERICA, Plaintiffs,
vs.
AMBROSIO APAPAS et al., Defendants.

This cause coming on this day to be further tried before the court and a jury heretofore duly impanelled herein; Dudley W. Robinson, Esq., Assistant U. S. Attorney, appearing as counsel for the United States; defendants being present in custody of the U. S. Marshal,

with their counsel, Miguel Estudillo, Esq., and S. M. Johnston, Esq.; John P. Doyle, and Monroe H. Conlee being present as shorthand reporters of the testimony and proceedings; and counsel having stipulated that the jury are present, and having waived roll call of the jury; and the jurors all being present in court; and Alger Fast and O. D. Ellis having been called and sworn as witnesses on behalf of defendants, and having given their testimony; and Cervantes Lubo, one of the defendants (indicted herein as Santos Lubo), a witness on behalf of the defendants, having been recalled for further examination, and having given his testimony; and Calisto Tortes, a witness heretofore sworn herein, having been called as a witness on behalf of defendants, and having given his testimony; and the court having given the jury the usual admonition; and court, at the hour of 12 o'clock M., having taken a recess until
39 the hour of 2 o'clock, P. M., of this day.

And now, at the hour of 2 o'clock, P. M., court having reconvened; and defendants, counsel and shorthand reporter being present as before; and counsel having stipulated that the jury are present, and having waived roll call of the jury; and the jurors all being present in court; and Charles H. Thomas having been called and sworn as a witness on behalf of defendants, and having given his testimony; and Ignacio Costa, a witness heretofore sworn herein, having been called as a witness on behalf of defendant, and having given his testimony; and Charlie Arenas, one of the defendants, having been called as a witness on behalf of defendants, and having been sworn by Judge Rudkin and having given his testimony through Condino Hopkins, interpreter of the Cahuilla Indian and English languages; and court, at the hour of 3:50 o'clock, P. M., having taken a recess for 10 minutes; and now, at the hour of 4 o'clock, P. M., court having reconvened; and defendants, counsel and the shorthand reporters being present as before; and counsel having stipulated that the jury are present and having waived roll call of the jury; and the jurors all being present in court; and Juan Costa having been called as a witness on behalf of defendants, and having been sworn by Judge Rudkin and having given his testimony; and Juanito Casero having been called and sworn as a witness on behalf of defendants, and having given his testimony through said interpreter Condino Hopkins; and the court having given the jury the usual admonition; it is now, at the hour of 5:08 o'clock, P. M., ordered that this cause be, and the same hereby is continued until Friday, the 14th day of March, 1913, at 10:30 o'clock, A. M. Defendants are remanded to the custody of the U. S. Marshal.

40 At a Stated Term, To wit: The January Term, A. D. 1913, of the District Court of the United States of America, in and for the Southern District of California, Southern Division, Held at the Court-room Thereof, in the City of Los Angeles, on Friday, the 14th day of March, in the Year of Our Lord One Thousand Nine Hundred and Thirteen.

Present: The Honorable Frank H. Rudkin, District Judge.

No. 518, Crim. S. D.

THE UNITED STATES OF AMERICA, Plaintiffs.
vs.
AMBROSIO APAPAS et al., Defendants.

This cause coming on this day to be further tried before the court and a jury heretofore duly impanelled herein; Dudley W. Robinson, Esq., Assistant U. S. Attorney, appearing as counsel for the United States; defendants being present, in custody of the U. S. Marshal, with their counsel, Miguel Estudillo, Esq., and S. M. Johnstone, Esq.; John P. Doyle and Monroe H. Conlee being present as shorthand reporters of the testimony and proceedings; and counsel having stipulated that the jury are present, and having waived roll call of the jury; and the jurors all being present in court; and Ignacio Guanche and Augustine Hamilton having been called and sworn as witnesses on behalf of defendant, and having given their testimony; and Juan Tortes having been called as a witness on behalf of defendants, and having been duly sworn by Judge Rudkin and having given his testimony; and court, at the hour of 12 o'clock, M., having taken a recess until the hour of 2 o'clock, P. M., of this day;

And now, at the hour of 2 o'clock, P. M., court having reconvened; and defendants, counsel and shorthand reporters being
41 present as before; and counsel having stipulated that the jury are present and having waived roll call of the jury; and the jurors all being present in court; and Chapo Luna having been called and sworn as a witness on behalf of defendants, and having given his testimony through R. J. Dominguez, court interpreter of the testimony and proceedings; and Leonicio Lugo having been called and sworn as a witness on behalf of defendants, and having given his testimony; and, in connection with the testimony of said witness, the Government having offered for identification a blue shirt, which is for identification marked U. S. Ex. 16; and court, at the hour of 4 o'clock, P. M., having taken a recess for 10 minutes; and now, at the hour of 4:10 o'clock, P. M., court having reconvened; and defendants, counsel and shorthand reporters being present as before; and counsel having stipulated that the jury are present and having waived roll call of the jury; and the jurors all being present in court; and Bernardo Resbaloso having been called as a witness on behalf of defendants, and having been duly sworn by Judge Rudkin, and having given his testimony through R. J.

Dominguez, court interpreter of the Spanish and English languages; and defendants having rested; it is now, at the hour of 4:35 o'clock, P. M., ordered that said cause be, and the same hereby is continued until Monday, the 17th day of March, 1913, at 2 o'clock, P. M., for further trial. Defendants are remanded to the custody of the U. S. Marshal.

42 At a Stated Term, To wit: The January Term, A. D. 1913, of the District Court of the United States of America, in and for the Southern District of California, Southern Division, Held at the Court-room Thereof, in the City of Los Angeles, on Monday, the 17th Day of March, in the Year of Our Lord one Thousand Nine Hundred and Thirteen.

Present: The Honorable Frank H. Rudkin, District Judge.

No. 518, Crim. S. D.

THE UNITED STATES OF AMERICA, Plaintiffs.
vs.
AMBROSIO APAPAS et al., Defendants.

This cause coming on at this time to be further tried before the court and a jury heretofore duly impanelled herein; Dudley W. Robinson, Esq., Assistant U. S. Attorney, appearing as counsel for the United States; defendants being present in custody of the U. S. Marshal, with their counsel, Miguel Estudillo, Esq., and S. M. Johnstone, Esq.; John P. Doyle, Monroe H. Conlee and E. C. Thompson being present as shorthand reporters of the testimony and proceedings; and counsel having stipulated that the jury are present, and having waived roll call of the jury; and the jurors all being present in court; and Leonicio Lugo, one of the defendants, and a witness on behalf of defendants, having been recalled for further examination, and having given his testimony; and, in connection with the testimony of said witness, the Government having offered a leaden bullet, which is admitted in evidence on behalf of the United States as U. S. Ex. 16, and, also in connection with said testimony, defendants having offered a certified copy of complaint against Selso Serrano and a certified copy of complaint against John Largo, which are together admitted in evidence on behalf of defendants, as
43 Def't's Ex. A; and Ambrosio Apapas, one of the defendants, having been called and sworn as a witness on behalf of defendants, and having given his testimony through Condino Hopkins, interpreter of the Cahuilla Indian and English languages; and, on application of the Government, permission having been granted for withdrawal from the custody of the Clerk U. S. Exhibit 3 heretofore offered for identification; and defendants having rested; and the Government, in rebuttal, having called as witnesses Wm. Bradford and Frank N. Clark, who are duly sworn and give their testimony; and Carl Pederson and John Largo, witnesses on behalf of the United States, having been recalled for further examination

in rebuttal, and having given their testimony; and Charles Vandeventer having been called and sworn as a witness on behalf of the United States in rebuttal, and having given his testimony; and Frank A. Thackery, a witness heretofore sworn herein, having been called as a witness on behalf of the United States in rebuttal, and having given his testimony; and Jesus Juaro, heretofore sworn as a witness herein, having been called as a witness on behalf of the Government in rebuttal, and having given his testimony through Ralph J. Dominguez, interpreter of the Spanish and English languages; and the Government having rested; and there being no further testimony; it is ordered that all witnesses in this case be, and they hereby are excused; and it is further ordered, on motion of Dudley W. Robinson, Esq., Assistant U. S. Attorney, of counsel for the United States, that certain documents, exhibits herein, may hereafter be withdrawn from the files, upon the substitution and filing in lieu thereof of certified copies of said exhibits; and court, at the hour of 3:05 o'clock, P. M., having taken a recess for 10 minutes; and now, at the hour of 3:15 o'clock, P. M., court having reconvened; and defendants, counsel and shorthand reporters being present as before;

44 and counsel having stipulated that the jury are present and having waived roll call of the jury; and the jurors all being present in court; and said cause having been argued to the jury, on behalf of the Government, by Dudley W. Robinson, Esq., Assistant U. S. Attorney, of counsel for the United States, and on behalf of defendants by S. M. Johnstone, Esq., of counsel for defendants; and the court having given the jury the usual admonition; it is now, at the hour of 4:50 o'clock P. M., by the court ordered that said cause be, and the same hereby is continued until Wednesday, the 19th day of March, 1913, at 10:30 o'clock, A. M., for further trial, until which time the jurors are excused; Defendants are remanded to the custody of the U. S. Marshal.

45 At a Stated Term, To wit: The January Term, A. D. 1913, of the District Court of the United States of America, in and for the Southern District of California, Southern Division, Held at the Court-room Thereof, in the City of Los Angeles, on Wednesday, the 19th Day of March, in the Year of Our Lord One Thousand Nine Hundred and Thirteen.

Present: The Honorable Frank H. Rudkin, District Judge.

No. 518, Crim. S. D.

THE UNITED STATES OF AMERICA, Plaintiffs,
vs.
AMBROSIO APAPAS et al., Defendants.

This cause coming on this day to be further tried before the court and a jury heretofore duly impanelled herein; Dudley W. Robinson, Esq., Assistant U. S. Attorney, appearing as counsel for the United States; defendants being present in custody of the U. S. Marshal,

with their counsel, Miguel Estudillo, Esq., and S. M. Johnstone, Esq.; John P. Doyle, being present as shorthand reporter of the testimony and proceedings; and counsel having stipulated that the jury are present and having waived roll call of the jury; and the jurors all being present in court; and said cause having been further argued to the jury, on behalf of defendants, by Miguel Estudillo, Esq., of counsel for the defendants; and the court having given the jury the usual admonition; and court having, at the hour of 12 o'clock M., taken a recess until the hour of 2 o'clock, P. M., of this day;

And now, at the hour of 2 o'clock P. M., court having reconvened; and defendants, counsel and shorthand reporter being present as before; and counsel having stipulated that the jury are present and having waived roll call of the jury; and the jurors all being present in court; and said cause having been further argued to the
46 jury, on behalf of defendants, by Miguel Estudillo, Esq., of counsel for defendants, and on behalf of the Government in reply by Dudley W. Robinson, Esq., Assistant U. S. Attorney, of counsel for the United States; and court, at the hour of 3:40 o'clock, P. M., having taken a recess for 15 minutes; and now, at the hour of 3:55 o'clock, P. M., court having reconvened; and defendants, counsel and shorthand reporter being present as before; and counsel having stipulated that the jury are present, and having waived roll call of the jury; and the jurors all being present in court; and said cause having been further argued to the jury, on behalf of the Government in reply, by Dudley W. Robinson, Esq., Assistant U. S. Attorney, of counsel for the United States; it is, at the hour of 5:40 o'clock, P. M., by the court ordered that said cause be, and the same hereby is continued until Thursday, the 20th day of March, 1913, at 10:30 o'clock, A. M., for further trial, until which time the jurors are excused. Defendants are remanded to the custody of the U. S. Marshal.

47 At a Stated Term, To-wit: The January Term, A. D. 1913, of the District Court of the United States of America, in and for the Southern District of California, Southern Division, Held at the Court-room Thereof, in the City of Los Angeles, on Thursday, the 20th Day of March, in the Year of Our Lord One Thousand Nine Hundred and Thirteen.

Present: The Honorable Frank H. Rudkin, District Judge.

No. 518, Crim. S. D.

THE UNITED STATES OF AMERICA, Plaintiffs,
vs.
AMBROSIO APAPAS et al., Defendants.

This cause coming on this day to be further tried before the court and a jury heretofore duly impanelled herein: Dudley W. Robinson,

Esq., Assistant U. S. Attorney, appearing as counsel for the United States; defendants being present in custody of the U. S. Marshal, with their counsel, Miguel Estudillo, Esq., and S. M. Johnstone, Esq.; John P. Doyle, being present as shorthand reporter of the testimony and proceedings; and counsel having stipulated that the jury are present and having waived roll call of the jury; and the jurors all being present in court; and the court having read its written instructions to the jury; it is ordered that exceptions be, and they hereby are noted on behalf of the defendants to each and every of the instructions given by the court, and to the refusal of the court to give such of the instructions requested by defendants as were refused by the court; the jury, at the hour of 11 o'clock, A. M., retire to consider of their verdict. Defendants are remanded to the custody of the U. S. Marshal.

(At 12 M.)

No. 518, Crim. S. D.

THE UNITED STATES OF AMERICA, Plaintiffs,
vs.
AMBROSIO APAPAS et al., Defendants.

48 It is now, at the hour of 12 o'clock, M., by the court ordered that the U. S. Marshal conduct the jury herein to some suitable place for their dinner, said dinner for the jurors and the accompanying officers to be at the expense of the Government, and that, after said dinner the U. S. Marshal reconduct the jury to their room for further deliberation concerning their verdict.

(At 4:45 P. M.)

No. 518, Crim. S. D.

THE UNITED STATES OF AMERICA, Plaintiffs,
vs.
AMBROSIO APAPAS et al., Defendants.

It is now by the court ordered, good cause appearing therefor, that the U. S. Marshal for this district take the jury herein to some suitable place for their supper, said supper for the jury and the accompanying officers to be at the expense of the Government, and after said supper that said Marshal return the jury to their room for further deliberation, there to remain for the night; and it is further ordered that the U. S. Marshal for this District, on the morning of March 21st 1913, take the jury to some suitable place for their breakfast, said breakfast for the jury and accompanying officers to be at the expense of the Government, and that after said breakfast said Marshal return the jury to their room for further deliberation.

49 At a Stated Term, To-wit: The January Term, A. D. 1913, of the District Court of the United States of America, in and for the Southern District of California, Southern Division, Held at the Court-room Thereof, in the City of Los Angeles, on Friday, the 21st Day of March, in the Year of Our Lord One Thousand Nine Hundred and Thirteen.

Present: The Honorable Frank H. Rudkin, District Judge.

No. 518, Crim. S. D.

THE UNITED STATES OF AMERICA, Plaintiffs,
vs.
AMBROSIO APAPAS et al., Defendants.

Now, at the hour of 11 o'clock, A. M., come the jury in this cause; Dudley W. Robinson, Esq., Assistant U. S. Attorney, appearing as counsel for the United States; defendants being present, in custody of the United States Marshal, with their counsel, Miguel Estudillo, Esq., and S. M. Johnstone, Esq.; John P. Doyle being present as shorthand reporter of the testimony and proceedings; and the roll of the jury having been called, and all being present; and the jurors having been asked if they have agreed upon a verdict, and having by their foreman replied that they have so agreed, and having been required to state their verdct, and their verdict having been read by the foreman; now, by direction of the court, said verdict is filed and recorded by the Clerk, said verdict being as follows, and the following being the record thereof, to-wit:

In the District Court of the United States for the Southern District of California, Southern Division.

No. 518, Crim. S. D.

THE UNITED STATES OF AMERICA, Plaintiffs,
vs.
AMBROSIO APAPAS, CHARLIE ARENAS, PATRICK CASERO, AGAPITO LUBO, CORNELIO LUBO, FRANCISCO LUBO, PABLINO LUBO, PIO
50 LUBO, CERVANTES LUBO (Indicted Herein as Santos Lubo), and LEONICIO LUGO, Defendants.

We, the jury in the above entitled cause, find the defendants Ambrosio Apapas, Leonicio Lugo, Pablino Lubo, Cornelio Lubo, Francisco Lubo, Pio Lubo guilty of murder in the second degree, an dthe defendants Cervantes Lubo (indicted herein as Santos Lubo), Agapito Lubo, Charlie Arenas, Patrick Casero not guilty as charged in the indictment.

Los Angeles, Cal., Mar. 21st 1913.

W. H. CLINE, *Foreman.*

And said verdict having been read to the jury as so recorded, and the jurors having said that it is their verdict; it is now by the court ordered that the two special veniremen on this jury be, and they hereby are excused from further attendance on this court, and that the U. S. Marshal for this District pay to said special veniremen their lawful fees for attendance and travel; and it is further ordered that the term trial jurors on this jury be, and they hereby are excused until Tuesday, the 25th day of March, 1913, at 10:30 o'clock, A. M., except juror Geo. A. Leach, who is excused for 30 days; and it is further ordered that defendants Cervantes Lubo (indicted herein as Santos Lubo), Agapito Lubo, Charlie Arenas and Patrick Casero be, and they hereby are discharged; and it is further ordered, on motion of Miguel Estudillo, Esq., of counsel for defendants, and by consent, that this cause be, and the same hereby is continued until Wednesday, the 26th day of March, 1913, at 10:30 o'clock, A. M., for the sentence of defendants Ambrosio Apapas, Leonicio Lugo, Pablino Lubo, Cornelio Lubo, Francisco Lubo, and Pio Lubo. Said defendants are remanded to the custody of the U. S. Marshal.

51 In the District Court of the United States for the Southern District of California, Southern Division.

No. 518, Crim. S. D.

THE UNITED STATES OF AMERICA, Plaintiffs,

vs.

AMBROSIO APAPAS, CHARLIE ARENAS, PATRICK CASERO, AGAPITO LUBO, Cornelio Lubo, Francisco Lubo, Pablino Lubo, Pio Lubo, Cervantes Lubo (Indicted Herein as Santos Lubo), and Leonicio Lugo, Defendants.

We, the jury in the above entitled cause, find the defendants Ambrosio Apapas, Leonicio Lugo, Pablino Lubo, Cornelio Lubo, Francisco Lubo, Pio Lubo, guilty of murder in the second degree, and the defendants Cervantes Lubo (indicted herein as Santos Lubo) Agapito Lubo, Charlie Arenas, Patrick Casero, not guilty as charged in the indictment.

Los Angeles, Cal., Mar. 21st 1913.

W. H. CLINE, *Foreman.*

(Endorsed:) 518 Crim. United States District Court, Southern District of Calif. Southern Division. United States vs. Ambrosio Apapas et al. Verdict. Filed March 21, 1913. Wm. M. Van Dyke, Clerk. By C. E. Scott, Deputy Clerk.

52 In the District Court of the United States in and for the Southern District of California, Southern Division.

THE UNITED STATES OF AMERICA, Plaintiff,

v.

AMBROSIO APAPAS, CHARLIE ARENAS, PATRICK CASERO, AGAPITO Lubo, Cornelio Lubo, Francisco Lubo, Pablino Lubo, Pio Lubo, Cervantes Lubo, and Leonicio Lugo, Defendants.

Motion for a New Trial.

Come now the defendants, Ambrosio Apapas, Cornelio Lubo, Francisco Lubo, Pablino Lubo, Pio Lubo and Leonicio Lugo, and move the court for a new trial in said action, on the following grounds.

1. That the jury received evidence out of court other than that resulting from a view of the premises.
2. That the verdict was decided by lot and by means other than fair expression of opinion on the part of all the jurors.
3. On account of errors of law arising during the course of the trial and excepted to by the defendants.
4. That the said verdict is contrary to law.
5. That the said verdict is contrary to the evidence and is not sustained thereby.
6. On account of misconduct of the jurors during the trial.
7. On account of misconduct of the attorney representing the plaintiff in the case.

53 8. On account of newly discovered evidence material to the defendants and which they could not with reasonable diligence have discovered and produced at the trial.

MIGUEL ESTUDILLO,
S. M. JOHNSTONE,
Attorneys for Defendants.

Dated Los Angeles, Cal. March 26, 1913.

(Endorsed:) No. 518 Crim. District Court of the United States, in and for the Southern District of California, Southern Division. The United States of America, Plaintiff vs. Ambrosio Apapas, Et. Al., Defendants. Motion for a New Trial. Filed March 27, 1913. Wm. M. Van Dyke, Clerk, by C. E. Scott, Deputy Clerk. Personal service of the within — and receipt of a copy thereof is hereby admitted this — day of —— 191–. Attorney for Miguel Estudillo Attorney for Plaintiffs. Rooms 6, 7 and 8, Covert Block Riverside, California.

54 *Copy of Orders Denying Motions for New Trial and in Arrest of Judgment and of Sentences.*

At a Stated Term, To wit: The January Term, A. D. 1913, of the District Court of the United States of America in and for the Southern District of California, Southern Division, Held at the Court-room Thereof, in the City of Los Angeles, on Thursday, the 27th Day of March, in the Year of Our Lord One Thousand Nine Hundred and Thirteen.

Present: The Honorable Frank H. Rudkin, District Judge.

No. 518, Crim. S. D.

THE UNITED STATES OF AMERICA, Plaintiffs,
vs.
AMBROSIO APAPAS et al., Defendants.

This cause coming on this day for the sentence of defendants Ambrosio Apapas, Cornelio Lubo, Francisco Lubo, Pablino Lubo, Pio Lubo and Leonicio Lugo, and said six defendants being present in court, in custody of the Marshal, with their counsel Miguel Estudillo, Esq., and S. M. Johnstone, Esq.; John P. Doyle being present as shorthand reporter of the testimony and proceedings; and a motion for a new trial of said defendants having been filed in their behalf, and, in connection with said motion, the following exhibits having been filed, to wit: Deft's Ex. X, copy of Los Angeles Times of March 21, 1913; Deft's Ex. Y, affidavit of Ambrosio Apapas; and Deft's Ex. Z, Affidavit of Maria Magee; and said motion for a new trial having been argued, in support thereof, by Miguel Estudillo, Esq., of counsel for defendants; and it appearing that, by inadvertence, counsel for defendants did not sign said motion for a new trial, now, on motion of S. M. Johnstone, Esq., of counsel for defendants, leave is granted counsel for defendants to sign said motion for a new trial; and said motion having been further argued,
55 in opposition thereto, by Dudley W. Robinson, Esq., Assistant U. S. Attorney, of counsel for the United States, and in support thereof in reply by S. M. Johnstone, Esq., and Miguel Estudillo, Esq., of counsel for defendants; it is ordered that said motion for a new trial be, and the same hereby is submitted to the court for its consideration and decision; and court having thereupon, at the hour of 11:55 o'clock A. M., taken a recess until the hour of 3 o'clock, P. M., of this day, said six defendants in the meantime being remanded to the custody of the U. S. Marshal; and now, at the hour of 3 o'clock, P. M., court having reconvened; and defendants Ambrosio Apapas, Cornelio Lubo, Francisco Lubo, Pablino Lubo, Pio Lubo and Leonicio Lugo being present in custody of the U. S. Marshal, with their counsel, Miguel Estudillo, Esq., and S. M. Johnstone, Esq.; Dudley W. Robinson, Esq., Assistant U. S. Attorney, appearing as counsel for the United States; John P. Doyle, being present as shorthand reporter of the testimony and proceedings; it

is now by the court ordered that defendants' motion for a new trial, heard and submitted to the court for its consideration and decision at the morning session of the court, be, and the same hereby is denied, to which ruling of the court, on motion of said defendants and by direction of the court, exceptions are hereby noted herein in behalf of said defendants; and a motion in arrest of judgment having been made on behalf of said six defendants by S. M. Johnstone, Esq., of counsel for said defendants, and having been argued by said S. M. Johnstone, Esq., of counsel for said defendants, in support thereof, and having been submitted to the court for its consideration and decision; it is now by the court ordered that defendants' motion in arrest of judgment be, and the same hereby is denied, to which ruling of the court, on motion of said defendants and by direction of the court, exceptions are hereby noted herein on behalf of said defendants; and defendant Ambrosio Apapas having been called for sentence, the court pronounces sentence upon said de-
56 fendant as follows, to wit: The judgment of the Court is, that the defendant Ambrosio Apapas be imprisoned for the term of ten (10) years in the United States Penetentiary at McNeil Island, State of Washington; and defendant Francisco Lubo having been called for sentence, the court pronounces sentence upon said defendant as follows, to wit: The judgment of the Court is, that the defendant Francisco Lubo be imprisoned for the term of ten (10) years in the United States Penetentiary at McNeil Island, State of Washington; and the defendant Cornelio Lubo having been called for sentence, the court pronounces sentence upon said defendant as follows, to wit: The judgment of the Court is, that the defendant Cornelio Lubo be imprisoned for the term of ten (10) years in the United States Penetentiary at McNeil Island, State of Washington; and the defendant Pablino Lubo having been called for sentence, the court pronounces sentence upon said defendant as follows, to wit: The judgment of the Court is, that the defendant Pablino Lubo be imprisoned for the term of ten (10) years in the United States Pen-tentiary at McNeil Island, State of Washington; and the defendant Pio Lubo having been called for sentence, the court pronounces sentence upon said defendant as follows, to wit: The judgment of the Court is, that the defendant Pio Lubo be imprisoned for the term of ten (10) years in the United States Penetentiary at McNeil Island, State of Washington; and the defendant Leonicio Lugo having been called for sentence, the court pronounces sentence upon said defendant as follows, to wit: The Judgment of the Court is, that the defendant Leonicio Lugo be imprisoned for the term of ten (10) years in the United States Penetentiary at McNeil Island, State of Washington; thereupon, on motion of S. M. Johnstone, Esq., of counsel for said defendants, it is ordered that said defendants be, and they hereby are granted ninety (90) days within which to pre-
57 pare, serve and file their proposed bill of exceptions herein; and it is further ordered, on motion of Miguel Estudillo, Esq., of counsel for defendants, that said six defendants be, and they hereby are granted a stay of execution of judgment herein for fifteen (15) days; and it is further ordered by the court, that

the sentences pronounced upon said six defendants shall begin to run from today, and that the final commitment herein be issued upon the expiration of the stay of execution this day granted. Defendants Ambrosio Apapas, Francisco Lubo, Cornelio Lubo, Pablino Lubo, Pio Lubo and Leonicio Lugo are remanded to the custody of the U. S. Marshal.

58 In the District Court of the United States in and for the Southern District of California, Southern Division.

At a Stated Term of Court, Begun and Holden at the City of Los Angeles, County of Los Angeles, within and for the Southern Division of the Southern District of California, on the Second Monday in January, in the Year of Our Lord One Thousand Nine Hundred and Twelve.

The Grand Jurors of the United States of America, chosen, selected and sworn within and for the Division and District aforesaid, on their oath present:

That Ambrosio Apapas, Charlie Arenas, Patrick Casero, Agapito Lubo, Cornelio Lubo, Francisco Lubo, Pablino Lubo, Pio Lubo, Santos Lubo, and Leonicio Lugo, all being Indians, whose full and true names, other than as herein stated, are to the said Grand Jurors unknown, late of the Southern Division of the Southern District of California, heretofore, to-wit, on the second day of May, in the year of our Lord one thousand nine hundred and twelve, at, upon, and within the limits of a United States Indian Reservation, known as Cahuilla Indian Reservation, in the County of Riverside, within the Southern Division of the Southern District of California, and within the jurisdiction of this Honorable Court, with force and arms in and upon William H. Stanley, a white person, feloniously, wilfully, deliberately, premeditatedly and of their malice aforethought, did make an assault with a deadly weapon, to-wit, a revolver then and there held in the hands of them, the said Ambrosio Apapas, Charlie Arenas, Patrick Casero, Agapito Lubo, Cornelio Lubo, Francisco Lubo, Pablino Lubo, Pio Lubo, Santos Lubo, and Leonicio Lugo,
59 and then and there loaded and charged with gunpowder and leaden bullets; and they, the said Ambrosio Apapas, Charlie Arenas, Patrick Casero, Agapito Lubo, Cornelio Lubo, Francisco Lubo, Pablino Lubo, Pio Lubo, Santos Lubo, and Leonicio Lugo, then and there having the said revolver, as aforesaid, the same being then and there loaded and charged, as aforesaid, with the intent to kill the said William H. Stanley, then and there feloniously, wilfully, deliberately, premeditately and of their malice aforethought, did shoot off and discharge the said gun, at, against and upon the said William H. Stanley; and that they, the said Ambrosio Apapas, Charlie Arenas, Patrick Casero, Agapito Lubo, Cornelio Lubo, Francisco Lubo, Pablino Lubo, Pio Lubo, Santos Lubo, and Leonicio Lugo, with a leaden bullet so contained in said revolver, as aforesaid, by means of shooting off and discharging the said revolver, as aforesaid, did then and there feloniously, wilfully, and of their

malice aforethought, and from a deliberate and premeditated design to effect the death of said William H. Stanley, strike, penetrate and wound the said William H. Stanley, in and upon the back, and in, upon and through the abdomen of the said William H. Stanley, then and thereby giving to the said William H. Stanley, with the leaden bullet as aforesaid, a mortal wound, of which said mortal wound, he, the said William H. Stanley, did suffer and languish and soon thereafter, to-wit, on the third day of May, in the year of our Lord one thousand nine hundred and twelve, at said County of Riverside, State, Division and District aforesaid, did die;

And so the Grand Jurors aforesaid, on their oath aforesaid, do say that said Ambrosio Apapas, Charlie Arenas, Patrick Casero, Agapito Lubo, Cornelio Lubo, Francisco Lubo, Pablino Lubo, Pio Lubo, Santos Lubo, and Leonicio Lugo, all Indians as aforesaid, at the time and in the manner hereinbefore set forth, did, within a
60 district of country under the exclusive jurisdiction of the United States, commit the crime of murder,

Contrary to the form of the statutes of the United States in such case made and provided, and against the peace and dignity of the said United States.

61 *Second Count.*

And the Grand Jurors aforesaid, on their oath aforesaid, do further present:

That Ambrosio Apapas, Charlie Arenas, Patrick Casero, Agapito Lubo, Cornelio Lubo, Francisco Lubo, Pablino Lubo, Pio Lubo, Santos Lubo, and Leonicio Lugo, all being Indians, whose full and true names, other than as herein stated, are to the said Grand Jurors unknown, late of the Southern Division of the Southern District of California, heretofore, to-wit, on the second day of May, in the year of our Lord one thousand nine hundred and twelve, at, upon and within the limits of a United States Indian Reservation, known as Cahuilla Indian Reservation, in the County of Riverside, within the Southern Division of the Southern District of California, and within the jurisdiction of this Honorable Court, with force and arms in and upon William H. Stanley, a white person, feloniously, wilfully, deliberately, premeditatedly, and of their malice aforethought, did make an assault with a deadly weapon, to-wit, a revolver then and there held in the hand of the said Ambrosio Apapas, (whether the right or the left hand of the said Ambrosio Apapas being to the Grand Jury unknown) and then and there loaded and charged with gunpowder and leaden bullets; and they, the said Ambrosio Apapas, Charlie Arenas, Patrick Casero, Agapito Lubo, Cornelio Lubo, Francisco Lubo, Pablino Lubo, Pio Lubo, Santos Lubo, and Leonicio Lubo, then and there having the said revolver, as aforesaid, the same being then and there loaded and charged, as aforesaid, with the intent to kill the said William H. Stanley, then and there feloniously, wilfully, deliberately, premeditatedly, and of their malice aforethought, did induce and procure the said Ambrosio

Apapas to shoot off and discharge the said revolver at, against
62 and upon the said William H. Stanley, and the said Ambrosio Apapas, with the intent to kill the said William H. Stanley, then and there feloniously, wilfully, deliberately, premeditatedly, and of his malice aforethought, did shoot off and discharge the said revolver, at, against and upon the said William H. Stanley, and that they, the said Ambrosio Apapas, Charlie Arenas, Patrick Casero, Agapito Lubo, Cornelio Lubo, Francisco Lubo, Pablino Lubo, Pio Lubo, Santos Lubo, and Leonicio Lugo, with a leaden bullet so contained in said revolver, as aforesaid, by means of shooting off and discharging the said revolver, as aforesaid, did then and there feloniously, wilfully, of their malice aforethought and from a deliberate and premeditated design to effect the death of said William H. Stanley, strike, penetrate and wound the said William H. Stanley in and upon the back, and in, upon and through the abdomen of him, the said William H. Stanley, then and thereby giving to the said William H. Stanley, with the leaden bullet aforesaid, a mortal wound, of which said mortal wound, he, the said William H. Stanley, did suffer and languish and soon thereafter, to-wit, on the third day of May, in the year of our Lord one thousand nine hundred and twelve, at said County of Riverside, State, Division and District aforesaid, did die;

And so the Grand Jurors aforesaid, on their oath aforesaid, do say that said Ambrosio Apapas, Charlie Arenas, Patrick Casero, Agapito Lubo, Cornelio Lubo, Francisco Lubo, Pablino Lubo, Pio Lubo, Santos Lubo, and Leonicio Lugo, all Indians as aforesaid, at the time and in the manner hereinbefore set forth, did, within a district of country under the exclusive jurisdiction of the United States, commit the crime of murder,—

63 Contrary to the form of the Statutes of the United States in such case made and provided, and against the peace and dignity of the said United States.

64 *Third Count.*

And the Grand Jurors aforesaid, on their oath aforesaid, do further present:

That Ambrosio Apapas, an Indian, whose full and true name, other than as herein stated, is to the said Grand Jurors unknown, late of the Southern Division of the Southern District of California, heretofore, to-wit, on the second day of May, in the year of our Lord one thousand nine hundred and twelve, at, upon and within the limits of a United States Indian Reservation, known as Cahuilla Indian Reservation, in the County of Riverside, within the Southern Division of the Southern District of California, and within the jurisdiction of this Honorable Court, with force and arms in and upon William H. Stanley, a white person, feloniously, wilfully, deliberately, premeditatedly, and of his malice aforethought, did make an assault with a deadly weapon, towit, a revolver, then and there held in the hand of him, the said Ambrosio Apapas, (whether the right or the left hand of the said Ambrosio Apapas, being to the said

Grand Jurors unknown,) and then and there loaded and charged with gunpowder and leaden bullets; and he, the said Ambrosio Apapas, then and there having the said revolver, as aforesaid, the same being then and there loaded and charged, as aforesaid, with the intent to kill the said William H. Stanley, then and there feloniously, wilfully, deliberately, premeditatedly, and of his malice aforethought, did shoot off and discharge the said revolver at, against and upon the said William H. Stanley; and that he, the said Ambrosio Apapas, with a leaden bullet so contained in said revolver, as aforesaid, by means of the shooting off and discharging the said revolver, as aforesaid, did then and there feloniously, wil-
65 fully, of his malice aforethought, and from a deliberate and premeditated design to effect the death of said William H. Stanley, strike, penetrate and wound the said William H. Stanley, in and upon the back, and in, upon and through the abdomen of him, the said William H. Stanley, then and thereby giving to the said William H. Stanley, with the leaden bullet aforesaid, a mortal wound, of which said mortal wound he, the said William H. Stanley, did suffer and languish and soon thereafter, to-wit, on the third day of May, in the year of our Lord, one thousand nine hundred and twelve, at said County of Riverside, State, Division and District aforesaid, did die;

And the Grand Jurors aforesaid, on their oath aforesaid, do further say:

That Charlie Arenas, Patrick Casero, Agapito Lubo, Cornelio Lubo, Francisco Lubo, Pablino Lubo, Pio Lubo, Santos Lubo, and Leonicio Lugo, all being Indians, whose full and true names, other than as herein stated, are to the said Grand Jurors unknown, late of the Southern Division of the Southern District of California, heretofore, to-wit, on the aforesaid second day of May, in the year of our Lord, one thousand nine hundred and twelve, at, upon and within the limits of the aforesaid United States Indian Reservation, known as Cahuilla Indian Reservation, in the aforesaid County of Riverside, within the Southern Division of the Southern District of California, and within the jurisdiction of this Honorable Court, as aforesaid, did feloniously, wilfully, deliberately, premeditatedly, and of their malice aforethought, aid and abet the above named Ambrosio Apapas in making the assault with a deadly weapon, to-wit, a revolver then and there held in the hand of the said Ambrosio Apapas, as above set forth, with force and arms in and upon the above named William H. Stanley, a white person, which revolver was then and there
66 loaded and charged with gunpowder and leaden bullets, and they, the said Charlie Arenas, Patrick Casero, Agapito Lubo, Cornelio Lubo, Francisco Lubo, Pablino Lubo, Pio Lubo, Santos Lubo, and Leonicio Lugo, did then and there feloniously, wilfully, deliberately, premeditatedly, and of their malice aforethought, counsel, command, induce and procure the said Ambrosio Apapas, with force and arms in and upon the said William H. Stanley, a white person, to make an assault with a deadly weapon, to-wit, a revolver, then and and there held in the hand of the said Ambrosio Apapas, as above set forth (which assault was made by the said Ambrosio

Apapas as hereinbefore described), and which revolver was then and there loaded and charged with gunpowder and leaden bullets; and (the said Ambrosio Apapas then and there having the said revolver, as aforesaid, the same being then and there loaded and charged, as aforesaid,) they, the said Charlie Arenas, Patrick Casero, Agapito Lubo, Cornelio Lubo, Francisco Lubo, Pablino Lubo, Pio Lubo, Santos Lubo, and Leonicio Lugo, with the intent to induce and procure the killing of the said William H. Stanley, then and there feloniousy, wilfully, deliberately, premeditatedly, and of their malice aforethought, did counsel, command, induce and procure the said Ambrosio Apapas, to shoot off and discharge the said revolver, at, against, and upon the said William H. Stanley, and then and thereupon the said Ambrosio Apapas did shoot off and discharge the said revolver, at, against and upon the said William H. Stanley, as above set forth; and they, the said Charlie Arenas, Patrick Casero, Agapito Lubo, Cornelio Lubo, Francisco Lubo, Pablino Lubo, Pio Lubo, Santos Lubo, and Leonicio Lugo, by means of shooting off and discharging the said revolver, as aforesaid, did then and there
67 feloniously, wilfully of their malice aforethought and from a deliberate and premeditated design to effect the death of said William H. Stanley, cause and procure a leaden bullet so contained in said revolver, as aforesaid, to strike, penetrate and wound, and then and there a leaden bullet, so contained in said revolver, as aforesaid, did, by means of so shooting off and discharging said revolver, as aforesaid, then and there strike, penetrate and wound, the said William H. Stanley, in and upon the back, and in, upon and through the abdomen of him, the said William H. Stanley, then and thereby giving to the said William H. Stanley, with the leaden bullet aforesaid, a mortal wound, of which said mortal wound he, the said William H. Stanley, did suffer and languish and soon thereafter, to-wit, on the third day of May, in the year of our Lord one thousand nine hundred and twelve, at said County of Riverside, State, Division and District aforesaid, did die, as above set forth;

And so the Grand Jurors aforesaid, on their oath aforesaid, do say:

That said Ambrosio Apapas, Charlie Arenas, Patrick Casero, Agapito Lubo, Cornelio Lubo, Francisco Lubo, Pablino Lubo, Pio Lubo, Santos Lubo, and Leonicio Lugo, all Indians as aforesaid, at the time and in the manner hereinbefore set forth, did, within a district of country under the exclusive jurisdiction of the United States, commit the crime of murder against the person of a human being, to-wit, William H. Stanley,—

Contrary to the form of the statutes of the United States in such case made and provided and against the peace and dignity of the said United States.

A. I. McCORMICK,
United States Attorney.
DUDLEY W. ROBINSON,
Assistant United States Attorney.

68 (Endorsed:) No. 518 Crim. United States District Court, Southern District of California, Southern Division. The United States of America, vs. Ambrosio Apapas, Charlie Arenas, Patrick Casero, Agapito Lubo, Cornelio Lubo, Francisco Lubo, Pabino Lubo, Pio Lubo, Santos Lubo and Leonicio Lugo. Indictment for Viol. Secs. 273, 275 and 328 of Fed. Penal Code of 1910. Murder. A True Bill E. B. Tufts, Foreman. Presented and filed in open court this 6th day of July, A. D. 1912. Wm. M. Van Dyke, Clerk, By C. E. Scott, Deputy Clerk. —— ——, United States Attorney.

(Endorsed:) Names of witnesses examined before the said Grand Jury on finding the foregoing indictment.

I, Wm. M. Van Dyke, Clerk of the District Court of the United States, for the Southern District of California, do hereby certify the foregoing to be a full, true and correct copy of an original Indictment, as filed and of record in my office, July 6th, 1912, in the above entitled matter.

Attest my hand and seal of said District Court this 30th day of July, A. D. 1912.

[Seal of said Court.]

WM. M. VAN DYKE, *Clerk*,
By VIRGIL W. OWEN,
Deputy Clerk.

69 In the District Court of the United States, Southern District of California, Southern Division.

THE UNITED STATES OF AMERICA, Plaintiff,
v.
AMBROSIO APAPAS, CHARLIE ARENAS, PATRICK CASERO, AGAPITO LUBO, Cornelio Lubo, Francisco Lubo, Pablino Lubo, Pio Lubo, Cervantes Lubo, and Leonicicio Lugo, Defendant.

Bill of Exceptions.

This cause came on regularly for hearing before the Hon. Frank H. Rudkin, Judge Presiding, and a jury;

Present: Dudley Robinson, Esq., Assistant United States District Attorney, for the plaintiff, and Miguel Estudillo, Esq., and S. M. Johnstone, Esq., counsel for defendants, when the following proceedings were had, to wit:

Case called for trial on the 5th day of March, 1913, at 10:30 o'clock, a. m., both sides announced ready, defendants in court with counsel.

Mr. ROBINSON: We will proceed on indictment No. 518, which is a charge of murder, and we would ask that the other indictments be continued to follow that one.

* * * * * * *

Jury duly impanelled and sworn, and case stated by counsel for the Government.

Indictment read, with exception of second count thereof, the reading of which was omitted by stipulation as follows:

Mr. ROBINSON: The second count is the same, excepting a slight difference in the technical language and counsel agrees
70 that the third may be ready as that states the matter as principal and accessory.

Mr. ESTUDILLO: Yes.

(Witnesses sworn and excluded, after being admonished by the court not to discuss the case.)

Mr. JOHNSTONE: If the court please, we would like the Government to stipulate that all rulings of the Court adverse to the party making an objection or request will be deemed excepted to, with the same effect as though the exception were taken following the ruling.

Mr. ROBINSON: That is agreeable. That follows the state practice here.

The COURT: Yes, and that exception may be incorporated in the record when made up. I take it that the practice prevails in California courts in criminal cases; but as a matter of caution you had better have the exceptions inserted in the record when the testimony is transcribed.

Mr. JOHNSTONE: Yes.

Mr. ROBINSON: Yes.

C. E. ARNOLD on behalf of the Government, testified as follows:

My name is C. E. Arnold. I reside at San Jacinto. I am a physician and surgeon. I knew William H. Stanley in his lifetime. I was called to the Coahuilla Reservation in Riverside County. I think it was May 2nd. Got there about five, I think, in the afternoon. I was with Charley Chambers, the deputy sheriff over there, and the city marshal*l*, Mr. Lloyd. I was in San Jacinto when I received the summons to go. I did not send for any other physician before leaving San Jacinto. Dr. Martin attended up there. I sent
for him from Aguanga. Dr. Martin of Riverside. I made
71 an examination of him. I found him in the house owned by the superintendent, or the school teacher, where the school teacher lives up there. I found a bullet wound in the back, between the *cres* of the ilium, about two inches up external to the right of the spine, and a bullet under the skin, just in the soft part, below the rib, a little to the left of the median line. The bullet had entered at the back. I found it protruding just under the skin*g* at the front. There was an upward level course of the bullet, I should think about four or five inches. Dr. Stanley was about five feet seven or eight, I guess. Weighed about 160 I suppose; maybe more. I had known him for some time. He had been vomiting blood before I got there, and he vomited blood while I was there. The bullet penetrated the soft parts, and into the abdomen*t*, and through the stomach. The bleeding was from the stomach into the—into the stomach and into the abdominal cavity.

Q. I show you a bullet, doctor, and ask you if you have seen that before and can identify it in any way (handing object to witness).

A. I think I have.

I believe Dr. Martin done the marking with a pair of forceps here. It looks like the bullet I took from Stanley. Don't remember making any remarks. Do not know who made mark M on there. We marked it with forceps here. I can see the mark of the forceps. Just shut down on it. I think it is the same bullet that was marked with the forceps in my presence. I did not seal it in an envelope in the Grand Jury room. Don't remember identifying it in the Grand Jury room. I don't think I did. I attended Celso Serrano when he was shot.

72 Q. Did you see a bullet——

Mr. JOHNSTONE: We object to any evidence as to Celso Serrano. This case is involving the death of William H. Stanley.

By Mr. ROBINSON:

Q. Is Mr. Stanley alive or dead?
A. Dead.
Q. How did he die?
A. From a bullet wound.
Q. You attended Celson Serrano, did you?
A. I did.
Q. Was he wounded?
A. He was.
Q. Did you take any bullets from his body?
A. I did.
Q. I show you another bullet. Do you recognize the mark on that?
A. I do.
Q. Could you say whether this is the one you took from Celso Serrano?

Mr. JOHNSTONE: We object to any evidence as to any bullets taken from Celso Serrano, on the ground that it is immaterial to this case.

The COURT: It may become material. I will overrule the objection for the present. I don't know what the purpose of it is.

Mr. ROBINSON: It is part of the case.

A. Yes, I think it is.

Q. Now, keep that one in your left hand and I will show you this other one which I showed you previously. Now, can you say whether that which you hold in your right hand is the bullet which was marked at the time you took it from Mr. Stanley's body (hand object to witness)?

73 A. I think it is.

Mr. ROBINSON: We will offer that as United States Exhibit 1, and this one taken from the body of Celse Serrano we might as well of-er now to same time.

Mr. JOHNSTONE: It will be subject to our objection on connection.

The COURT: Yes, it may be. (Exception taken.)

Mr. ROBINSON: That is United States Exhibit 2.

A. The physical sym-tom of Mr. Stanley's condition besides the vomiting of blood were shock, weakness, and hiccoughing. I talked with Mr. Stanley while he was there. I had a conversation with him concerning his condition.

Q. Will you state what it was, as far as you remember.

Mr. JOHNSTONE: Objected to as incompetent, irrelevant and immaterial.

The COURT: Are you laying the foundation for some dying declaration?

Mr. ROBINSON: Yes, sir.

The COURT: The objection is overruled. (Exception.)

A. What is the question?

By Mr. ROBINSON:

Q. Just state as nearly as you can recollect, what it was he said.

The COURT: About his condition.

Mr. ROBINSON: About his condition, yes.

A. I told him when I first got there that he ought to make a statement, that he was hurt very badly, and he should make a statement, so that we would have it—have a right account.

Q. What did he say?

A. Well, he said, "What does this mean—that I am going to die?" and I told him that "You know you are very seriously hurt, and we are going to operate on you when we get around
74 to it, and you might not wake up."

Q. Did you hear Mr. Stanley say anything about President McKinley?

A. I think I did.

Mr. JOHNSTONE: We object to that as immaterial. I do not see where the connection is.

The COURT: You may state anything he said, directly or indirectly, about his own condition.

Mr. ROBINSON: This is only to call the witness' attention to a matter that he had not mentioned.

Mr. ESTUDILLO: It is leading and suggestive.

Mr. ROBINSON: No, it is not. Now, this will bear exactly upon his condition.

The COURT: You may ask him directly what he said about his condition, if anything. (Exception taken.)

By Mr. ROBINSON:

Q. Well, what else did he say about his condition?

A. Well, I don't remember exactly what was said. The McKinley case was discussed, and Mr. Stanley referred to himself in that way, said he had about what McKinley got.

Mr. ESTUDILLO: Now, your Honor, I move to strike that out as being an opinion of Mr. Stanley, or an inference, and that the proper foundation for the admission of such testimony has not been laid.

The COURT: I will dispose of that motion later, Senator.

By Mr. ROBINSON:

Q. Did he say anything about his hiccoughs?

A. If I remember correctly, he said something about when a man is hurt internally, that way, and begin- hiccoughing, it is all off with him, or something like that.

75 *Q.* I was there when Sheriff Wilson came. He was in the room with me. I can't say that I heard the conversation he had with Stanley. Stanley was mortally wounded. I took his statement down in writing, and we operated on him immediately. When we put him on the operating table, he said "Good bye." He said good bye to his wife and told us fellows "Well, boys, good bye." I can't say that he said anything else. After he said good bye, we administered the chloroform to him.

Q. I show you a book with some hand writing in pencil in it, Doctor, and ask you if you have seen that before. (Hands same to witness.)

A. I have. That is my hand writing. The statement that I took down that night. It is all in my hand writing. The language is Mr. Stanley's, as he talked I wrote it. When I finished writing, he signed his name to it, in my presence, Will H. Stanley.

* * * * * * *

The Book referred to was marked Exhibit 3 for identification.

I attended Cellso Serrano that same night. I found him wounded in the left side of the chest. The bullet went in about two inches, external to the mam-ary, about the sixth rib, I think and came out at the back, about in the same position, about four inches external from the spine. It was just under the skin.

Mr. JOHNSTONE: I assume that it is understood that all testimony in reference to Celso Serrano is admitted over our objection and subject to our motion to strike out?

The COURT: This testimony relates to a different subject.

76 I thought possibly it might be something in connection with the two bullets that they wanted to identify. I confess I do not see the relevancy of this testimony at the present time.

Mr. ROBINSON: The relevancy appears from my statement that Celso Serrano was wounded in this engagement, and I wish to show not only that he was wounded but that the bullet he was wounded with came from this gun, and that Apapas fired the shot. It is all part of the same transaction.

The COURT: I thought perhaps there might be some connection between the two bullets, but the fact that he was wounded is not material so far as I can see.

Mr. JOHNSTONE: This witness is simply called to prove the corpus delicti in the case of William H. Stanley, and not to prove any of the facts in reference to the shooting of Serrano.

(Argument.)

Mr. ESTUDILLO: May it please the court, this evidence in reference to Celso Serrano is evidence of another offense, if anything, and we don't know at this time whether there is any evidence here showing that a bullet from a certain revolver, or any revolver at all, caused

the death of Stanley, and I say that the evidence in reference to Celso Serrano, for that reason, is improper, irrelevant and immaterial evidence of another offense, and it is not part of the res gestæ. It has not been shown that it was so connected together that it became part of the res gestae.

Mr. ROBINSON: We cannot show it all at once.

The COURT: I will admit the testimony subject to objection, for the purpose of getting through with this witness. (Exception.)

77 Mr. JOHNSTONE: And subject to our motion to strike out?

The COURT: Yes.

Mr. ROBINSON: That is all.

Cross-examination:

By Mr. JOHNSTONE:

Q. The bullet entered the body of William H. Stanley in the back about two inches external to the spine on the right about two inches above the crest of the ilium.

* * * * * * *

The bullet did not pass through the kidney. It must have passed internally through the kidney. * * * It passed through the stomach and lodged just under the skin just below the ribs about in the mammary, I think just under the costo cartilages here (indicating), four inches to the left of the media*n* line. * * * I think I saw Stanley about seven hours after he was shot. I am not positive as to the time.

* * * * * * *

Stanley was suffering pain. The bullet passing through the course described by me would cause internal bleeding.

H. R. MARTIN, a witness produced on behalf of the Government, testified as follows:

My name is H. R. Martin. I am a p-ysician and surgeon. Live and practice in Riverside County and in the City of Riverside. I attended William H. Stan*ton* at Cauhilla on the 2nd of May, 1912. When I got there I examined Mr. Stanley and found him lying in bed with a bullet wound and in a pretty serious condition — shock and col-apse. He was in a rational condition of mind. I talked

78 with him a little. I cannot give the conversation verbatim, but I remember asking him how he fel- and where he was wounded and how he came to get wounded. Of course it wasn't of so much interest to me except I wanted to find out if he was able to stand an operation, and I heard him make several statements as to part of the cause of the shooting.

The COURT: We will not go into that, Doctor.

I took the bullet out and marked it with a pair of forceps, or a pair — s-iscors, just with a -cratch on it and sealed in an envelope. I believe that to be the bullet. (Indicating U. S. Ex. 1 for identification.) There is the forceps marks on it. It is the same shape and size and appearance as the bullet I took out of him. The cause of death was loss of blood, I think, caused by the bullet wound. It

went through fatal regions, I think it was a fatal wound. From my observation when I examined him and performed the operation, having been wounded and remained as long as he did, before medical attention reaching him, there was a possibility of his living. I think—well—it was twelve hours about—twelve or thirteen hours after the injury before I operated. The accident happened about nine or ten o'clock in the morning and I did not operate I think before about half past ten or twelve that night. My reason *were* stating that his chances were very small is because of the attack of vomiting which forced food and blood and disgestion out into and around the bowels. I think it would have been possible for him to get well without *a* peritonitis at least if he had not lost so much blood to kill him so suddenly, but the peritonitis, I think, would undoubtedly — been fatal.

* * * * * * *

I administered an anesthetic to him while I was there.

79 Cross-examination:

I could tell that he was under the influence of *an* narcotic when I got there, morphine, which condition continued until his death. His chances of recovery were about twenty, that *it* what I figured before the operation. I would not have advised an operation unless the idea that there was a chance for recovery had existed in my mind. The point of entrance of the bullet was the ilium, the hip bone. I think about one or possibly two inches above the crest of ilium on the right side, about possibly three or four inches from the back bone. The bullet coursed forward and upward to the left. Mr. Stanley was without medical aid for some twelve or thirteen hours so far as I know. He had Doctors there before that but I don't know what they did of my own knowledge. He was suffering when an attempt to move or vomit was made. The bullet was found beneath the skin about possibly six inches below the left nipple line I think the bullet did not strike a rib. I don't remember that he had any injury to the rib * * *

FANNIE V. STEVENS, on behalf of the Government, testified as follows:

My name is Fannie V. Stevens. I resided at Caohilla, in Riverside County, California, in May 1912. I was living there with my husband who was a teacher in the school in the Indian service.

Q. I -how you a photograph and ask you if you can state what that photograph is and what the same represents, (handing same to witness.)

80 A. It is a picture of the school taken from the back of this cottage, from the back *on* the hill, while I was living there. It is a fair and true representation of the scene which it attemp-s to depict. The building in the left foreground is the teacher's cottage; the building slightly to right of the foreground in the middle is the school room and children's dining room. The building to the right is the Catholic church, and the photograph is taken from that place back of the cottage near the reservoir. *P*

Picture offered in evidence as United States Exhibit 4.

Mr. ROBINSON: I would like to show it to the jury so that as the testimony is proceeding, they can have in mind the outline. That is the only purpose to give an idea*n* of the situation there.

Another photograph was shown the witness Mrs. Stevens which she said was a representation of the school building and of the dining room taken almost directly from back of the teacher's cottage, and pointing in the direction of the rear of the school building where the dining room is.

I was present when that photograph was taken in 1912. It is a faithful representation of the object which it purports to depict. I don't know exactly when that picture was taken. It was taken in the spring by Mr. Stevens, my husband. It represents the school building and the children's dining room. A part of the back. (Photograph received and Marked as United States exhibit 4 A.

I was at Cauhilla on the 2nd day of May, 1912, all day. Did not hear any shooting early in the morning. Heard some shooting approximately about a quarter after ten. I was in my kitchen at the time, in the teacher's house. I could not say how many shots
81 were fired. I heard a number of shots, but did not pay attention to the exact number at that time. After hearing the shots, more shots and the Indians yelling a-tracted my attention. When I heard that, I went to the North window of my dining room and looked out my window in the direction of the school building. I saw a number of Indians struggling with John Largo. In reference to the school building, they were in the front. That was to my left as I looked out of the window. I saw Ambrosio Apapas standing behind the school building, near the rear door of the school building, the dining room door, slightly to my right.

Q. And that would be the door and looking about in the direction as shown in this photograph, United States Exhibit 4 A. That is, were you looking about in the direction towards that door as it is shown there as you saw him?

A. Yes, sir.

The COURT: How far apart are those buildings?

A. I can't reckon distance.

Mr. ROBINSON: I should say *there* were probably 50 or 60 feet apart.

Mr. ESTUDILLO: All of that.

Mr. ROBINSON: There is a fence that show- in this photograph, and I think that the fence is about equal*ly* distance between the two buildings. I will show this photograph to the jury. (Handing same to jury.)

Ambrosio Apapas, was pointing a gun at Celso Serrano who was over the fence a little ways off the school grounds. I thought he was shooting. I did not stop to look at him any length of time. I saw John coming toward the yard gate. The gate that led to the front part of the cottage. The side gate. The gate between the
82 school and the cottage. In the fence there are two gates. One is even with the back door shown in the photograph marked

United States Exhibit 4 A. And there is one farther in front. He was coming to the front gate. I went out the front door, down to the ground to the gate, when I got there John Largo was trying to get the gate open and couldn't get the gate open. Pablino and Cervantes Lubo were with him.

Q. Is either one of those a defendant in this case, do you see them here?

A. I hardly recognize them. No, I don't to recognize them. I haven't been on the reservation since the middle of June, 1912, and haven't seen them since then. I know Pablino Lubo and Cervantes Lubo. When I got to the gate I asked them what they were going to do with John. I didn't address it to either one, to both of them, Cervantes and Pablino.

Exception No. 6.

Q. And what if anything did they answer?

Mr. JOHNSTONE: Objected to as Incompetent, irrelevant and immaterial as to what they were going to do with John. The- is no allegation in this i-dictment as to any injury being inflicted upon John.

The COURT: I am under the impression that these questions will have to be covered by the charge of the court. So many things transpired in such a short time I apprehend from what I have heard of the testimony that it will be absolutely impossible to segregate them.

Mr. ROBINSON: It will be part of the res gestæ for one thing, as your honor indicates, and, furthermore, to show the motive and intent of these persons.

The COURT: I will overrule the objection.

Exception taken by defendants.

83 I asked them what they were going to do with John. They didn't answer me. They just stared at me and talked Indian to the crowd behind them. By the crowd behind them I mean the Indians that were present that morning. There were a number of them in the school yard at that time. After they turned to speak to the other Indians, I tried to make Pablino let lo-se of John. I took hold of him to push him away from John. I asked John what they were going to do with him. He said that he didn't know.

Q. Exception No. 7.

Q. And did you have any further conversation while those two defendants were present and when John was there?

A. I asked John what the trouble was.

Q. And what did he say?

A. He said they were all fighting.

Q. And other conversations.

A. He said Mr. Stanley—I asked if anybody was hurt.

Q. And what did he say?

Mr. JOHNSTONE: We object to that unless it is shown the defend-

ants in this case were all present at the time of the conversation. It is hearsay as to them if they were not.

The COURT: It is hearsay as to those not present, in any event. Two of them were present, were they?

Mr. JOHNSTONE: She testifies that two of them were present, and that is all.

The COURT: You may answer the question.

Exception taken by defendant-.

A. He said he t-ought Stanley was shot.

Q. And when he said that what did you do?

A. I immediately ran back to the dining-room door of the school building.

84 Q. Did you see anybody there?

A. Mr. Stanley coming out.

He had lose*d* his clothes and was walking stooped. I assisted him to the teacher's cottage. I asked him if he was hurt. He said he was shot through and through At that time I did not see where he was wounded. I took him in the house and laid him on the cot. At that time I looked at his wound. He was shot in the back. I observed the ball in the front of his body. I could see is under the skin.

Upon motion of defendants, the answer of witness that she — a ball under the skin, was stricken out.

What I noticed there under the skin looked blue and a raised place. I felt it. It was hard. It was a lump.

Exception No. 8.

Q. Did you or Mr. Stanley then say anything concerning the possibility of his living or dying?

A. I told him he might be shot so he would die in a minute or he might not, and asked him who shot him.

Mr. JOHNSTONE: We move to strike that out as incompetent, irrelevant and immaterial, and purely hearsay, as to what this lady told Mr. Stanley.

The COURT: Yes, unless there was some re*p*sonse. Of course, it isn't harmful, anyway, what she did state.

By Mr. ROBINSON:

Q. You say you put him on the lounge. Did he remain there?

A. No, sir.

Q. Where did he go to?

A. We put him into a bed in the front room.

Q. When you moved him to the bed in the front room, did you look at his wound again?

85 A. Yes, sir.

Q. Did you have any conversation with him concerning the seriousness of the wound?

A. He asked me if I thought he was shot through the kidney.

Q. And what did you answer?

A. I thought he was.

Mr. JOHNSTONE: We move to strike that our as incompetent, irrelevant and immaterial, and an opinion of this witness, purely hearsay, and not part of the res gestæ.

The COURT: In view of the testimony that came in this forenoon, I do not see how the government expects to get this declaration before the jury; but I am willing to hear from you. In view of the testimony of the physicians and what the deceased said to them, he was not in a dying condition * * * Are you going to prove any other declaration than the one you have already proven?

Mr. ROBINSON: The one we have marked for identification?

The COURT: Yes; is that the only statement you desire to prove?

Mr. ROBINSON: Yes, sir, the written declaration.

Mr. JOHNSTONE: Then we insist that our objection is good.

The COURT: I will hear all the testimony before ruling on it. You may proceed.

Exception taken by defendant.

While he was on the bed he took a band ring from his finger and gave it to me. He talked of how long it would be before a doctor and his wife could reach him. He vomited violently and hiccoughed. The vomiting and hiccoughing continued for a length of time.

He died about 4:50.

86 Cross-examination.

By Mr. JOHNSTONE:

It was ten fifteen when I heard the first shots. I was inside the house. Not near a window where I could see where they came from. After I heard the shots I went to the north window from where I could see the school grounds in part, the south part. You could see up to the school building. I say I saw some Indian- there. I don't know how many. I could not approximate how many. John Largo was the only one I recognized in front of the school building.

Q. Did John have a revolver in his hand at that time?

A. I didn't see any.

Q. Did you see a revolver in the hands of any one of the Indians?

A. No, not just then.

Q. You don't mean to testify that the shots you heard came from that group of Indians you saw when you looked out the window.

A. I don't know.

Then I saw John come to the gate between the school building and the cottage. Cervantes and Pablino Lubo were with him. I didn't see any others. That is all I saw, John, Cervantes and Pablino. There were others in that particular neighborhood a little ways behind John.

Q. About how far behind to the best of your estimation?

A. I can't reckon distance.

Q. Well, reckon it by reference to the railing here.

A. About as far as the back of the room.

The COURT: Well fifty feet is close enough.

87 Then I came out of the house and went over and spoke to John. The two men, Pablino and Cerventas, were holding John at that time They were talking to the Indians behind them and together. I know they were talking behind for they kept looking back to the others, *for* which I inferred they were talking to the Indians in back. They were not talking very loud, moderately. Louder than I am talking now. John did not have a revolver at that time. I didn't see that Cerventas or Pablino had a revolver at that*t* time. Cerventas and Pablino let go of John after a little while. John said Stanley was shot or he thought Stanley was shot, when I asked him. Pablino and Cervantes were there at that time. I have attempted to converse with them in English They could talk in the English tongue. I don't know whether they could understand every question I asked them. I think they understood what I said to John. I just think they understood. They could understand that much English. I know that because they have talked with me at different times at the cottage. I don't know whether they can carry on a general conversation in the English tongue, but I have talked with them both in English. The conversation has been more than a command. I have talked to one of them, Cervantes, concerning his sick daughter's condition and about the children coming to school. I don't remember just what I said to him in reference to the sick daughter. I asked him if she was being doctored, and if he thought she had consumption, that is what they always talked about. I don't remember whether that was the exact limit of the conversation. I don't know whether the conversations have ever been extended with any of the Indians. I know some of the other defendants present.

88 Francisco Leonicio, and Ambrosio*s*, and Patrick, and——.

Q. Where is Ambrosio*s* sitting?

Mr. ESTUDILLO: Is this Ambrosio*s*? Indicating Pablino Lubo, who rises).

A. Yes, sir.

Q. Is this Ambrosio*s* Apapas?

A. No, sir, I believe not.

(By Mr. JOHNSTONE:)

Q. Which one is Ambrosio*s* Apapas?

A. I don't know that I recognize Ambrosio*s* Apapas.

Mr. Stanley walked over from the school house with my assistance. I gave him a helping hand so as to steady him. He walked with just slight assistance from me. He said he was shot through and through before we went into the house. He expressed the same opinion after I got to him. After he was laid on the lounge, I found the bullet had entered in the back. I cannot give any description as to its location. It was located to the best of my judgment three or four inches near the spine.

* * * * * * *

Dr. Strasser was the first doctor there. He arrived about four o'clock. Dr. Arnold arrived not very long after.

* * * * * * *

MAY B. STANLEY, a witness on behalf of the Government, testified as follows:

My name is May Stanley. The widow of William H. Stanley. On the 2nd day of May, 1912, I went up to Cauhilla in company with Mr. Charles Chambers, Mr. Lloyd, and Dr. Arnold. Mr. Stanley was in bed when I got there in the teancher's house. I had a conversation with Mr. Stanley concerning his condition when I first went in the room. He said "O! May, I am done for." From the time I arrived I was with him all the time with the exception of about five minutes when I ate a little supper. Cauhillo
89 is about forty miles from San Jacinto. I heard a conversation between Mr. Stanley and the Sheriff concerning his condition. He shook hands and he said, "Well, they have got me this time, Frank." I was right beside him and the Sheriff was beside me right by his head. The Sheriff tried to cheer him up or something like that. * * * His mind seemed perfectly clear. We had been married and living together for fourteen years. His enunciation was inter-upted by hiccoughs.

Exception No. 9.

Q. When Mr. Stanley was on the operating table what, if anything, did he say to you?

A. He said, "Good bye."

Q. Did he say anything else besides "good bye," Mrs. Stanley?

A. Yes, before that he said something.

Q. What did he say?

A. He said, "Oh, Mae, I can't leave you and our little sister." We always called her sister. He said "little sister."

Q. Did he say anything about——

A. Oh, yes, he said——

Q. —your future action concerning your affairs?

A. Yes, he did.

Q. What did he say?

Mr. JOHNSTONE: If your Honor please, I do not think that anything that Mr. Stanley may have said after the declaration was made would be competnet as on the question which is before the court, as to whether or not the statement was a dying declaration, because statements as to his condition must relate to his condition at the time he was making the statement and not after the statement
90 was made.

The COURT: They are so closely connected in point of time, however, in this case that I think it will be competent. A period of about fifteen or twenty minutes elapsed, according to some of the testimony. She may answer.

Exception taken by defendant.

A. Well, he said, "Mae, remember I was a Mason and go to the Masons." (Witness displaying emotion.)

Statement offered in evidence as United States Exhibit 3 for identification.

* * * * * * *

F. P. WILSON, on behalf of the Government, testified as follows:

My name is F. P. Wilson, Sheriff of Riverside County, was such in 1912, on the 2nd day of May, 1912, *m* I went to the Cauhillo Indian Reservation, leaving Riverside about one o'clock, as nearly as I can remember, arri*n*ving at the reservation *a* between four and five, nearer five, as near as I can judge. I went into the building where Mr. Stanley was. I don't know whether they call it the teacher's cottage or not. I saw Mr. Stanley in there. I told him I was sorry to meet him in that condition. My recollection is that he said that "they have got me," or something of that kind. Stayed there a very few minutes, I went out. That is all the conversation I had with him. At that time I visited the house of Ambrosio*s* Apapas. That is, I should judge, it was a little over a quarter of a mile*s*, maybe a third of a mile. Did not find Ambrosio*s* Apapas there. I looked in the house and through several buildings there, out buildings. I did not find him on the reservation. We tried to find Francisco Lugo at the same time but couldn't find
91 him. Then we started back to Riverside, and we found them about three miles this side of Perris. There were two teams of Indians coming this way, coming towards Riverside. And about three miles this side of Perris, and I asked them if they had come from Cauhillo, and they stated they had. And then I asked them where the Indian was that shot Stanley and they said this was the man and I says, "I want you to get out and get in the machine with me." I know the Captain of those Indians. Captain Leonicio Lugo, a man who calls himself captain. He was in the bunch there.

Q. Did he point Apapas out to you?

A. My recollection is that he was the man that pointed him out, yes, sir.

Q. And then what did you do?

A. I took Leonicio, or I took Ambrosio*s* Apapas, to Riverside, and also instructed the Captain to bring Francisco Lugo in the next morning at 9 o'clock, which he did. I took Apapas to Riverside and locked him up. When they came in the next morning Leonicio Lugo was with them, and they brought Francisco Lugo with them.

Q. I show you a revolver, Mr. Wilson, and ask if you have ever seen that before.

A. Yes, sir. I first saw it in my office on the 3rd day of May, 1912. It was handed to me by Captain Leonicio Lugo. This man that sits here the third in the line.

Exception No. 10.

Q. When he handed it to you did he say anything?

Mr. JOHNSTONE: We object, if you Honor please, as being hearsay as against the defendant Apapas.

The COURT: It is he-resay as against all the other defendants except this one, unless made in their presence.

92 Mr. ROBINSON: Unless there is shown to have been a conspiracy. The declaration itself would bind only Leonicio Lugo.

The COURT: Yes. Please state the conversation as to the gun.

By Mr. ROBINSON:

Q. What did he say?

A. He gave me the gun and said this was the one that Apapas shot Stanley with, and that they had done their part, they had started to bring Apapas in and turn him over to me, and they were sorry it happened, and this is the gun that Stanley was shot with.

Q. Did you have a conversation with Apapas after you got that gun?

A. Well, there was a conversation took place in my office on the 6th of May. Mr. Durlin, Deputy United States Marshall, Henry Nelson, my Deputy, and Gabe Costa and Apapas and Captain Lugo were present at that time.

Q. What was the conversation?

A. Objection by Mr. Johnstone. Question withdrawn. Exception No. 11.

Q. Did Apapas make any statements at that time—Without saying what they were, did he make any statements?

A. He did.

Q. Did you or anyone there offer him any promises or immunity for talking?

A. No, sir.

Mr. JOHNSTONE: We move to strike out the answer as to whether he made a promise of immunity or not. Whether it amounted to a promise or not is for the court to decide..

(Argument.)

The COURT: The court will have to determine from what was said whether or not there was in fact such a promise.

93 By Mr. ROBINSON:

Q. All right. State what the conversation was.

A. Mr. Durlin gave it to Costa to ask Apapas if this was the gun he shot Stanley with.

Q. Now, was there any conversation before that at all?

A. I think there was, but I don't remember exactly what it was. Nothing in regard to——

Q. Was there any conversation with Apapas?

A. No, I don't think so. I don't remember of any.

Q. Were there any gestures used toward Apapas at all?

A. No, sir.

Q. Was he standing alone in the room, that is, standing free in the room

A. Yes, sir, sitting down.

Q. Was he in shackles?

A. No, sir.

Q. Did anybody have hands on him?

A. No, sir.

Q. And the first thing that was said to him as far as you can remember, was this question through Gabe Costa?

A. That is my best recollection, yes.

Q. What was done then or said?

A. He asked him this question through the interpreter, and he answered in the affirmative, that——

Mr. JOHNSTONE: I think, if your honor please, in view of the fact that there has been an interpreter here, the question asked of the defendant by that interpreter should be introduced as a foundation as to whether or not a hope of reward of immunity, threat or duress had been exercised against this defendant before he made any statement as to what the gun was or what it was not, or anything connected with the subject under investigation here. This
94 witness, I do not presume, contends that he understands the tongue of the defendants or the interpreter, and until that foundation is laid I think the statement is incompetent.

The COURT: Who is the interpreter?

Mr. ROBINSON: He is Gabe Costa, a-d a witness whom we decline to call. He is the interpreter who is relied upon by the defense to check the government interpreter in this case, and he is here for that purpose only.

The COURT: My recollection is that the courts hold that conversations given through an interpreter may be proven without calling the interpreter; although I may be in error in regard to that.

Mr. ROBINSON: If counsel wants to call that interpreter and have him go on the stand as their witness, so that I may cross-examine him, I will withdraw this witness first.

The COURT: Unless counsel desire to ask this witness some questions, I will overrule the objection. If you desire to interrogate him, you may.

Mr. ESTUDILLO: Yes, your honor.

Q. The town of Perris is about how many miles from Riverside?

A. Eighteen.

Mr. ROBINSON: I understand it is just as to this conversation.

Mr. ESTUDILLO: Oh, yes; I beg pardon. It was as to this declaration.

The COURT: Yes, whether there — any effort or promises or anything of that kind.

(Discussion.)

95 By Mr. ROBINSON: Now, where was the pistol at the time Mr. *Mr.* Durlin told Gabe Costa to ask that question? Was it near Apapas?

A. My recollection is that Mr. Durlin had it at the time, or it was on the table, I forgot which.

It was put so Apapas cou-d see it. Well he answered through the interpreter when he waae asked this question. I don't think he took the pistol. He was probably 8 or 10 feet, may be not quite so far from the pistol. We were all in the room together there. He was looking at the pistol at the time he answered. My recollection is

that he kind of bowed his head when he answered the question through the interpreter. When the interpreter asked him the questions he, the interpreter, pointed towards the pistol. At *tht* the time I got the pistol, I think, it had some loaded shells and some empty shells in it.

Q. I show you four empty shells and two loaded ones, and *ake* you if you can say whether those are the shells you refer to (handing same to witness).

A. Well, that is the same calibre that was used, and I think that is about the proportion of empty and loaded shells that were in the gun at the same time. Of course, I couldn't swear to that.

Q. Four empty and two loaded shells?

A. Yes.

Q. And what did you do with that pistol after you had that conversation on the 6th day of May?

A. I took the number of it and the calibre and turned it over *t* to the Deputy United States Marshal, Mr. Durlin.

Mr. ROBINSON: We offer those shells for identification. We will offer the pistol as United States Exhibit 5 and the shells as United States Exhibit 6 for identification.

96 Exception No. 12.

Mr. ESTUDILLO: It is objected to as incompetent, irrelevant and immaterial, a proper foundation has not been laid for the introduction of that pistol or tha shells, as it has not been *s* shown that that pistol was taken from the defendant Apapas, and I understand he is the one concerned here, your honor.

The COURT: My understanding is that it was brought to the sheriff's office?

The WITNESS: Yes.

Mr. ESTUDILLO: Brought by Capt. Lugo and handed to the sherif-.

The COURT: It will be no evidence whatever as against Apapas, but it will be admitted as against the other defendants in view of the conversation with them.

Mr. JOHNSTONE: Of course, that is introduced over our objecti-n and subject to being ruled out if not connected up, that a conspiracy has existed.

The COURT: Yes, of course.

Mr. ROBINSON: Your honor said it will be no evidence. I presume your *nonor* means it is now no evidence, unless it is otherwise connected, and that then it may be.

The COURT: Certainly; I am simply passing upon the case as presented here now.

Mr. ROBINSON: For the present it is simply connected with Leonicio Lugo.

The COURT: Yes. And to avoid any misunderstanding on the part of the Jury, I will instruct them now that any statements of declarati-n- made by any of these defendants after the shooting occurred is no evidence against the others; they are only evidence against *s* the party who made them unless made in the presence of the other defendants.

By Mr. ROBINSON:

Q. Did you say that Apapas was present at the time Leonicio Lugo brought the pistol to the jail?

A. He was not in the office at the time he turned the pistol
97 over to me, no; he was up in the jail.

Mr. ROBINSON: That is all.

Cross-examination.

By Mr. ESTUDILLO:

Perris is about 18 miles from Riverside. Leonicio Lugo or Capt. Lugo and Francisco Lubo had Apapas in the wagon coming over towards Riverside and they delivered him to me. I did not *ex*-Francisco Lubo, that was 11 o'clock at night and they told me he had been shot in the knee, and I says: You bring him in to m*u* office tomorrow morning at 9 o'clock, that is Francisco Lubo, th-second man there, the second man from this man at the corner. They brought him in the next morning at 9 o'clock. Capt. Lugo did and the judge of the tribe Costa.

—. And did you examine Francisco Lubo then?

A. I think we looked at his knee. He was shot in the leg very slightly.

Q. There was a bullet wound in that leg?

A. Just simply a scratch. I don't think there was anything very serious.

Q. Did you get any doctor to treat that leg for him?

A. I don't remember now whet-er we did or not? The jailer may have done that.

Q. Well he had a wound in that leg, you examined that, did you or did you not?

A. I don't think I looked at it myself, I don't think I did. Apapas was not excited the least in the world that I could see. He was dejected, he sa't with his head hanging down. Well not very low. I tried to talk with him in English once or twice, but he did not seem to understand at all that I talked to him.

By Mr. ROBINSON:

Q. You had never talked with him before that had you?

A. No.

98 I did not know whet-er he could understand English or not.

H. F. NELSON, a witness on behalf of the Government testified as follows:

Direct examination:

My name is H. F. Nelson, occupation Deputy sheriff of Riverside County, was such Deputy Sheriff on May 1912. Did not make the trip up to Cahuilla, was in Sheriff's office when Ambros-o Apapas was brought in. Was there the next day when Leonicio Lugo, the Indi*na* who calls himself the Captain of the Cahuillas came in.

Q. I show you a revolver, being United States Exhibit 5.

Mr. JOHNSTONE: For identification.
Mr. ROBERTSON: No.

Q. And ask you if you have ever seen that before?

Mr. JOHNSTONE: Do I understand that that revolver is admitted in evidence?

The COURT: As against the party who brought it in and turned it over, only. The cartridges and blanks were not identified at all.

Mr. ROBINSON: They have been identified but not offered in evidence.

The COURT: They were not identified, and for that reason were not offered in evidence. The witness could not identify them, and they were not offered in evidence.

Mr. ROBINSON: No, but he said they were of the same calibre and the same number, and that he turned them over to Mr. Durlin. I have seen that before in the sheriff's office in Riverside, I it was in the captain's possession by the captain I mean Leonicio Lugo, the defendant. He spoke to the sheriff, he said something about the gun, I can't recall the words he said and handed the gun over to the sheriff. Part of the time I was there on the 6th of May, 1912 at a conversation in which Ambrosio Apapas
99 and Mr. Durlin, the Deputy United States Marshal were present. The revolver was there and it was shown to Apapas.

Q. What did Apapas do when the revolver was shown to him?

A. The sheriff handed the revolver to Mr. Durlin, and Mr. Durlin asked Apapas if that was the gun that he shot Stanley with, and he answered something in a language that I didn't understand, and then Mr. Durlin told the gentleman that acted as interpreter there to ask him the question in his own language—this man's name, I think, was Cost,—if that was the gun that he shot Mr. Stanley with and he said "Yes, sir".

Exception No. 13.

Mr. ESTUDILLO: I move to strike that out as hearsay, as being the statement of the interpreter instead of Apapas.

The COURT: I will reserve my ruling, and it may go in subject to a motion to strike out.

By Mr. ROBINSON:

Q. Did Apapas make any motion at the time he was making this answer—any motion of the hand or head?

A. Not that I can recall.

Mr. ROBINSON: That is all.

Jury admonished and excused till 10.30 o'clock the next morning. The admissibility of dying declaration was argued.

Thursday March 6th, 1913, the following proceedings were had:

The COURT: While the matter is fresh in my mind, late yesterday afternoon I admitted certain testimony by officers of Riverside

County as to conversations had with one of the defendants through an interpreter soon after his arrest. Some authorities hold that where two parties converse voluntarily through an interpreter in relation to a business transaction either party may testify to the conversation without calling the intermediary. I do not think that rule has any application here. I think the statements made
100 by the interpreter to the officers were pure-y hearsay, and I now instruct the jury to disregard all testimony given in this case by these officers as to any conversation had by the defendants or either of them through an interpreter.

I will reserve my ruling on the other question until later.

Mr. ROBINSON: Of course, I did not anticipate that ruling was to be made at this time, and would suggest that I think that should be qualified so that the jury might not understand that it meant that whole situation, of the gun being shown to him and all of the actions, is ruled out, but that merely the transmission of the alleged statements is ruled out.

The COURT: Yes, merely the statements made or alleged to have been made by the defendant through the interpreter the jury will disrgard entirely.

Mr. JOHNSTONE: Another matter I wish to speak about at this time so that it will not be overlooked, is that I noticed in reference to the offer of the government of the statement of William H. Stanley, an objection was made by the defense, but is not in the record for the reason it was made after the jury had been excused and in order that the record will show the objection I now desire to make it,—that the defense objects to the introduction of the statement of William H. Stanley upon the grounds that it is incompetent, irrelevant and immaterial, no proper foundation laid, and is hearsay as to these defendants.

The COURT: Call the next witness.

Mr. ROBINSON: I understand the court will reserve ruling on that.

The COURT: I have reserved ruling until later in the trial. There is no emergency about it now, I presume?

101 FRANCIS A. SWAINE, on behalf of the government testified as follows:

Direct examination:

My name is Francis A. Swaine, occupation, Superintendent at an Indian School, Indian Agent, at Fort McDermitt, Nevada, I was chief clerk at Segar, Oklahoma, up to the first of May, 1909, and from the first of May, 1909, to the 20th of June, 1911, I was superintendent in charge of the Coahuilla school and reservation, and from that time—or, from July 4th to May 20th, 1912, I was superintendent of the Moapa River School at Moapa, Nevada, and from May 24th to the present time I have been superintendent of the Fort McDermitt school, Nevada. Took charge of the Coahuilla reservation May first, 1909. Will Stanley at that time was in charge of the Soboba reservation near San Jacinto as Superintendent. Remainde in charge of the Coahuilla reservation until July first,

1911. During that tije Mr. Stanldy was Superintendent of the Soboba reservation, he became superintendent of the Caohuilla reservation when I was transferred on July first, 1911. He retained jurisdiction also of the Soboba reservation. His residence was at the Soboba reservation, San Jacinto. His residence was provided by the government as the residence of the superintendent. I know that he *did* his residence ther- after the first, or a short time after the first, I know positively, and that is all. I was there the first and second of July, I know the defendant Leonicio Lugo while I was at the Caohuilla reservation he had his residence *ther* there. I know the defendant Ambrosio Apapas. He resided on the reservation on the school, on the Coahuilla reservation. I know the other defendants who sit here. They are Coahuilla Indians.

Exception No. 14.

—. Now, Mr. Swayne, when you first came there on the reservation in May, 1909, were there any native officers—that is, Indian
102 officers, tribal officers on the reservation?

Mr. ESTUDILLO: We object to that, your honor, as incompetent irrelevant and immaterial; that it has nothing to do with the issues in this case. It is not a part of the res gestae here, as I understand the law to be, and I do not know what counsel's object may be.

The COURT: The question would seem to be purely preliminary. It has no bearing one way or the other.

Mr. ESTUDILLO: I understand that, and I kind of hesitated to make my objection. I do not like to let these questions go on that we shall contend are clearly immaterial.

The COURT: I will see what it is leading up to.

Answer the question. (Exception taken.)

(Last question read by the reporter.)
A. Yes, sir.

By Mr. ROBINSON:

Q. Who were they and what were their titles?

A. Leonicio Lugo was the captain of the Coahuillas and Pablino Lubo was the judge, so termed, tribal judge.

Mr. ROBINSON: Now, I have a document here in connection with the testimony of this witness——

Mr. ESTUDILLO: That will necessitate an argument on your view of the case and our contention, will it not?

Mr. ROBINSON: Yes, I am going to make the offer. I wish to offer a document with what I understand you stipulate is the signature of Leonicio Lugo. Is it admitted that the signature on the document which I hold in my hand is the signature of Leonicio Lugo?

Mr. ESTUDILLO: Yes, your honor, that is admitted.

Mr. JOHNSTONE: Let us limit that to what the document is. It is on a document bound together which bears on its face the stamp of the office of the Indian Affairs, with the date of receipt and the

number 55,395, and comprises—do you wish to take the
103 whole document here, exhibits and all?

Mr. ROBINSON: Yes.

Mr. JOHNSTONE: Do you know how many pages are here?

Mr. ROBINSON: No I don't. There is a further stipulation that *w* we can discuss in the discussion of the admissibility of this evidence.

Mr. JOHNSTONE: And comprises 18 pages. That will identify the document.

Exception No. 15.

By Mr. ROBINSON:

Q. Did you ever give Leonicio a commission?
A. Yes, sir.
Q. At what time was that?
A. In July, 1910.
Q. Did you ever take any further action with relation to that commission?

Mr. ESTUDILLO: I object to that as i-competent, irrelevant and immaterial.

The COURT: I do not know what it is leading up to. He may answer yes or no. (Exception taken.)

A. I did.

By Mr. ROBINSON:

Q. What did you do?
A. I revoked his commission.
Q. Did you inform Leonicio of that fact?
A. I did.
Q. That is, his commission as captain?
A. Yes, sir.
Q. At what time was that?
A. In September or October, 1910, I think.

MARY B. STANLEY, recalled on behalf of the government, and testified as follows:

Direct examination:

104 Education—Law & Order.
102298-1-1910.
55558-1911.
78956-1911.
H. L. B.

Complaints Against Administration.

OCT. 6, 1911.

Mr. Leonicio Lugo, (Through Superintendent Soboba Indian School), San Jacinto, California.

MY FRIEND: At various time complaints have reached the Office relative to dissatisfaction among some of the Indinans concerning the administration of affairs, on your reservation.

As a new superintendent has now taken charge, it is hoped that your relations with him may be agreeable, and that there may not be a repetition of the complaints made against the former superintendent. It is not intended that you should understand that the former superintendent was transferred because of the complaints, or through any fault on his part; but it is only hoped that you may under his successor come to realize that it is better for you to work with him rather than against him.

The Office has recently received a letter from Mr. Stanley, in which he states that he has visited the Indians on the Santa Rosa and Cahuilla reservations, and that he has found them "courteous, obliging, and respectful," and that he believes that they will be ready to work in unison with him as soon as they come to an under-
165 standing of the duties of his position as an agent of the Government. You must understand that his main duty is to do whatever is to your best interests and advantage, according to his judgment and also according to certain regulations which have been laid down for him by the Office at Washington. These rules he is obliged to follow; he has no choice. You, and other leaders among the Indians, can help him in this work, and by such means benefit your race. But, on the other hand, if you oppose his efforts, you may cause dissatisfaction among others of your race and by such means cause them trouble.

The situation is put before you in this way in order to give you an opportunity to think over these matters, and decide whether it will not be to your advantage to work agreeably with Mr. Stanley in carrying out the instructions given him by the Office, which he will be expected to carry out whether you oppose him or not.

Respectfully,

(Signed) C. F. HAUKE,
2nd Asst. Commissioner.

9-LGS-21.

(Endorsed on back:) 518 Crim. U. S. vs. Apapas et al. U. S. Exhibit 7. Filed March 6, 1913. Wm. M. Van Dyke, Clerk, by C. E. Scott, Deputy Clerk.

106 Soboba Indian School, California.

SAN JACINTO, CALIFORNIA, *October* 12, 1912.

Mr. Leonicio Lugo, Cahuilla, California.

DEAR FRIEND LUGO: Enclosed herewith I am handing you a letter from the Indian Office relative to matters at Cahuilla now and during the past few years. The Office has laid out my plans for work at Cahuilla and I request the co-operation of every Indian at Cahuilla to bring them to a successful and satisfactory termination. I would advise you to get together and show a willingness to do the right thing and I am sure we will be able to "do things" at Cahuilla.

Let's get together and start the ball a rolling and show the Office that Cahuilla is just as willing and ready to be agreeable and progressive as any other reservation and that the Cahuillas are not a

grouchy or complaining people. If you people are not willing to do this after this solicitation on the part of the Indian Office and this office, my position is clear and I must do then my duty regardless of what you people wish in the matter, and do it with promptness and dispatch. Again I say, let's get together and "do things." Let me hear from you about this matter or come down and let's talk the prospects over.

Very respectfully,

SUPT.

(Endorsed on back:) 518 Crim. U. S. vs. Apapas et al. U. S. Exhibit 7 A. Filed March 6, 1913. Wm. M. Van Dyke, Clerk, by C. E. Scott, Deputy Clerk.

107 In October 1911, I occupied the position as clerk on the Soboba and Coahuilla reservation. My husband, Mr. Stanley was the superintendent. I did try the typewriting there.

Exception No. 16.

Q. I will show you a letter dated October 12, 1911, and asked you if the original of that was signed by Mr. Stanley?

A. Yes, it was signed by Mr. Stanley.

Q. And sent in the mail with the letter of which that is a dopy to Leonicio Lugo?

A. Yes, this was enclosed.

Mr. ROBINSON: It is stipulated, I believe, that these letters were received with the signature of Mr. Stanley to the letter enclosed?

Mr. ESTUDILLO: Only I desire to make an objection to their competency.

Mr. ROBINSON: Certainly; but you stipulate that fact?

Mr. ESTUDILLO: They were received, yes.

Mr. ROBINSON: We will offer these in evidence as United States Exhibit- 7 and 7-A, the Department letter being 7 and the letter of transmission from Mr. Stanley being 7-A, with the understanding that the signature "Will H. Stanley" is considered to be appended to the bottom of the transmitting letter.

Mr. ESTUDILLO: Yes. To which the defendants object, on the grounds it is incompetent, irrelevant and immaterial; that those letters have no tendency to prove any of the issues in this case that they are hearsay to every defendant other than the one whose name appears to be signed in the communication, if it is signed.

Mr. ROBINSON: Perhaps I better offer another letter in connection with it, if you honor please.

The COURT: I will pass upon these at the present time. I will overrule the objection on the assumption that it may lead up
108 to something that will be material. I did not read the letter from the commissioner. Anything that letter may contain as to the defendants, or either of them is hearsay and is not competent against them. I suppose this is a part of the cor-espondence between the two parties.

(Exception.)

Mr. ROBINSON: *m*It is binding on the defendant Leonicio in that he received it.

The COURT: Yes, but if it contains any statements by the commissioner bearing upon his conduct in any way, that is no evidence, I don't know whether it does or not.

Mr. ESTUDILLO: A letter from the Department giving certain advice would be, at the best, only self serving declarations in the issue, that is all.

The COURT: I assume it is leading up to something else.

Mr. JOHNSTONE: It is admitted subject to our motion to strike out.

The COURT: Yes.

Mr. ROBINSON: This letter of October 5th is admitted to be signed by Leonicio Lugo, and his affidavit to *se* signed by Tefolio Pa, a man named Cabee and Bernardo Resvaloso.

Mr. JOHNSTONE: If these matters that we are asked to stipulate on were shown to us so that we could go over them and ascertain that fact, it will save a great deal of time during the actual progress of the case. We do not wish to make a lot of stipulations here unless we are absolutely certain. Unless the government has some urgency, we would ask that these be laid over.

Mr. ROBINSON: I had a conversation with you several days ago, and I understood you that if the signatures were correct—which can be easily ascertained in a moment—that you would rather stipulate.

109

OCTOBER 25, 1911.

Hon. R. G. Valentine, Commissioner of Indian Affairs, Washington, D. C.

DEAR SIR: We have received a letter from Assistant Commissioner Hauke in which he refers to Superintendent Stanley of the Soboba Indian Reservation, the Cahuillas, and the Santa Rosa Indians, and tells us that we must get along with Superintendent Stanley.

We are willing to get along with any man who will treat us fairly, and who will have the patience to deal with us as we think we should be dealt with. We are not asking very much, only to be allowed to elect our own Captains and our own Judges, and to be allowed to remain on the land that our fore-fathers lived on for generations past,—long before the white man ever coveted our country.

We are asking that you send us men who will not force upon us people who are not members of our tribe, but who happen to be in the good graces of the Superintendent. We are not rebellious or quarrelsome or a complaining people. We are willing to take any man that you send us if he will treat us half way fairly and justly, and will not tyrran-ize over us, simply because he has the power to do so.

The people of Soboba, Cahuilla and Santa Rosa Reservations protest against the appointment of Mr. Stanley as their Captain, for the reason that he is arbitrary, tyrannical in his rulings, and violent in temper, and for the further reason, that upon the slightest

110 provocation he imprisons an Indian, without trial and without cause.

I have attached affidavits here, substantiating these charges, and we respectfully ask you to send us some other Superintendent. We are a peaceable people, and we want to obey all the rulings of your department, but we are crying out for redress and deliverance from the man that you have placed over us.

Very respectfully,

(Signed) LEONICIO LUGO.

111 STATE OF CALIFORNIA,
County of Riverside, ss:

Teofilo Pa, being duly sworn, deposes and says: I am an Indian, a native of Soboba, in the county of Riverside, State of California, and I am a member of the Soboba tribe of Indians. I was born on the Soboba Reservation; I have been Captain of the Soboba tribe at three different times, I have also been Judge. I have known William Stanley for several years. The said William Stanley is a man of irascible temper, and very impatient in his dealings with the members of my tribe. He is arbitrary in his rule, and at times tyrannical in his treatment.

During the month of March, 1911, by brother, Juan Torte, desired to get an Indian doctor to attend our father. Stanley objected to it, and stated that we could not have a doctor unless the doctor was called by himself. Together with my brother, I called at Stanley's house, and asked him whether it was true that he, Stanley, had sent our Indian Doctor away. Stanley replied I have orders from the Government to furnish you doctors, no one has a right to cure only those authorized by me. That is all that happened between Stanley and myself. I did not say anything to Stanley personally, and only talked to my brother in the presence of Stanley.

Two days after this interview with Superintendent Stanley, his policeman notified me to appear before Stanley. I did so, and Stanley sentenced me to five days at hard labor, although I was sick with rheumatism at the time, on the charge of insubordination; and my brother Juan Torte, was sentenced to ten days in jail. He offered to pay the fine, but was not allowed to do so, as
112 Stanley refused to accept the money for the fine, insisting that my brother should serve his time in jail; the offense my brother committed was merely to ask Stanley in my presence, whether he, my brother, could not have his own doctor; and my offense was the fact that I was present when those questions were asked Superintendent Stanley by my brother. Although we have lived upon the land for generations past, Stanley tells us that we do not own the land, and therefore, we are afraid to plant it to trees or anything else, for fear that we might lose it. Further than that, Stanley refuses to allow us to cut timber upon our own land. It is necessary for us, in order to live, to have the right of cutting the timber on our own land, and selling it, as we can exchange the wood for seed and for something to eat.

Of the 500 eucalypti planted, I cannot cut a single tree, for fear that Stanley will throw me in jail, although I am sorely in need

of the profits that I would derive from sale of the wood. Stanley tells us that the wood belongs to the Government, and therefore that we cannot cut it, and what I say in reference to myself is true in reference to every other Indian living on the reservation. All the other Indians, as well as myself, would be glad to plant trees for wood and shade, and fruit trees for the purpose of making our living, but we are afraid of Stanley.

Further than that, affiant says, that Superintendent Stanley is partial and shows a decided favoritism to a few Indians who do his bidding, and those few Indians are just about seven in number. The rest of the people of the reservation are not in the good graces of Superintendent Stanley.

Affiant further says, that Superintendent Stanley has been in the habit of giving lots of land in the reservation to outsiders who have moved into the reservation, an instance of this is the land of an old man by the name of Sceferino, whose house and land was
113 taken away from him by Stanley and given to Joe Estrada. Another instance is Louis Maje, from Rincon, San Diego County, who though not belonging to our people, was given a piece of land by Stanley. This man Maje was and is a bad man. At a meeting held by the people of Soboba, it was decided that he should not live on the reservation. Mr. Stanley at that time approved the actions of the Indians, and then later on caused the said Louis Maje to be brought back to the reservation, and advocated Maje's staying on the reservation, and advocated his cause at Washington, on the ground that Maje had married one of the women of the Soboba tribe. Maje was not married to the woman at all.

Affiant further says, that Stanley interferes with the rights of the people of the tribe to elect their own officers. For instance, during the month of June, 1911, following Superintendent Stanley's advice, the people got together to name a Captain and a Judge,—Stanley saying that he would name the police, himself; the people after an election, named Bernardo Resbaloso, as Captain, and another man for Judge. After we had elected Bernardo by a majority vote, Stanley would not recognize or accept him, and refused to issue a Captain's commission to him. One of the excuses he gave was that Bernardo did not speak English and was a drunkard and had no work. Affiant further says, that although these objections were made by Stanley to Bernardo, that he, Stanley, has had a man by the name of Luterio as Captain, and that Luterio drank all the time, and was drunk during the month of September, 1911, while working on the Indian school.

Stanley is willing to treat those who agree with him, with great partiality, and those Indians who are not in his favor, are treated severely. For instance, he had the wife of Bonifacio Causi under arrest to stay in her house for three days, and not leave the
114 house without the permission of the Judge of the tribe, because the said wife of Bonifacio refused to be vaccinated. though she claimed that she would be willing to be vaccinated in case there was any danger of an epidemic of smallpox.

(Signed) TIOFILO PA.

I, Bonifacio Causi, and Bernardo Resbaloso, have read the foregoing affidavit, and we hereby on oath say, that the statements therein contained are true.

(Signed) BONEFACIO CABSE.
(Signed) BERNARDO RESBALOSO.

Subscribed and sworn to before me this 27th day of October, 1911.

T. S. BROWN,
Notary Public in and for the County of Riverside, State of California.

Teofilo Pa, Bonifacia Causi, and Bernardo Resbaloso, being personally known to me and personally appearing before me T. S. Brown, a Notary Public, in and for Riverside County, California, said parties being Indians of the Saboba and Cahuilla tribes, and being made duly and fully acquainted by an interpreter as to the contents of the affidavit hereto attached, they, and each of them made sworn affidavit as to the truthfulness of the statements therein made.

Subscribed and sworn to before me, this 27th day of October, 1911.

(Signed) T. S. BROWN,
Notary Public.

(Endorsed on back:) 518 Crim. U. S. v. Apapas et al. U. S. Exhibit 8. Filed March 6, 1913. Wm. M. Van Dyke, Clerk, By C. E. Scott, Deputy Clerk.

115 Mr. JOHNSTONE: While there might be no question about that signature, you asked us to stipulate as to other signatures of which we probably would not have any knowledge at all, and who are not parties to this case.

Mr. ROBINSON: But counsel will remember that I said we expected to have to call a notary public from Riverside, and as it would be a matter that we could prove, and the notary's seal is on there, we can stipulate as to that matter.

Mr. JOHNSTONE: We do not wish to set up an objection simply for the purpose of objecting, but we do not want to stipulate away rights here recklessly.

Mr. ROBINSON: I referred to that in our conversation, that letter was signed by Leonicio Lugo, and that letter and the affidavit went together.

Mr. JOHNSTONE: That is true.

Mr. ROBINSON: Were mailed together by Leonicio Lugo to Washington. I do not care who signed the affidavit.

Mr. JOHNSTONE: If that is all you want, without stipulating to the signature of the parties, that the letter containing the name of Leonicio Lugo, together with the affidavit, were forwarded in the mail to Washington and there received, and now produced from the records of the Indian Department.

Mr. ROBINSON: This letter was signed by Leonicio Lugo, and the affidavit and letter were mailed to the Indian Department.

Mr. JOHNSTONE: Yes, and this is produced from the records of the Indian Department.

Mr. ROBINSON: We offer that in evidence as United States Exhibit 8. That connects with the previous exhibit.

Mr. JOHNSTONE: Before making any further comment, we would like to have an opportunity to read the letter and the affidavit,
116 to see whether or not we have any objection to it.

Mr. ESTUDILLO: May it please the court, I understand the offer has been made. The defendants object to its introduction upon the grounds that it is incompetent, irrelevant and immaterial, hearsay, has no tendency to prove any of the issues in this case; that it is heresay and irrelevant regarding every other defendant in this case but the one whose—or, the ones whose names appear upon the communication.

The COURT: The jury will understand that these communications are only binding upon the persons who make them. With that understanding, the objection will be overrruled.

Exception taken by defendant.

Mr. ROBINSON: I do not like to ask the court to qualify, because if I keep stating ahead what I am going to prove, it takes up time. If a conspiracy was shown, the acts of any person during the conspiracy is binding upon all.

Mr. JOHNSTONE: With the limitation that the conspiracy must be shown to exist, and then the acts of the members of the conspiracy in furtherance of the object of the conspiracy binds them all, but not as to declarations not in furtherance of the conspiracy.

The COURT: The question will come up in the instructions. I wanted to caution the jury in advance as to that.

Exception No. 17.

Mr. ROBINSON: Do you stipulate that this letter dated February 20, 1912—that is, the original of it—and the original of the letter dated February 26th, 1912, with the signature of Will H. Stanley upon it, were received in the mail by Leonicio Lugo?

117 Education—Law and Order.

102298-1909.
25430-1911.
4174-1912.
F. L. S.

Complaint.

FEB. 20, 1912.

Mr. Leonicio Lugo, Through Superintendent Soboba Indian School, San Jacinto, California.

SIR: Under date of December 12, 1911, the Office acknowledged the receipt of your letter of October 25, whereby you submitted charges against Superintendent Stanley of Soboba Reservation, and

advised you that when the matter should have received consideration you would be further informed.

After a careful analysis of your complaints, they appear to be altogether groundless. You say:

We are willing to get along with any man who will treat us fairly and who will have the patience to deal with us as we think we should be dealt with.

This position is altogether wrong because if Superintendents were to do exactly what the Indians want them to under all circumstances, they would be useless so far as the purpose of the Service is concerned. Superintendents are sent to guide, assist, and protect the Indians to the end that their best interests shall be promoted, in the course of which it becomes necessary at times to deny certain desires of the Indians in accordance with instructions from this Office.

The fact that your people have lost possession of much of the lands that your forefathers lived on for generations is no fault of your Superintendent. You are also well aware that certain lands have been procured for your people; it is believed that these lands, if properly used, will be sufficient for their needs.

118 Several other matters referred to by you have been the subject of correspondence between this Office and the Superintendents of Soboba and Cahuilla Reservations on various occasions and there is no more justification for complaint concerning them than as to the two above mentioned.

The right of appointing Indian Judges and Indian Policemen is vested in this Office and not in the Indians. Only such Indians as are intelligent and honest and who are believed to be desirous of working for the real benefit of the Indians are acceptable for such positions. The Superintendent is likewise expected to see that only proper persons serve as captains of the tribe and he is wholly justified in withholding a commission from any Indian elected to that position who does not have the proper qualifications. The captains and leaders of the tribe should be intelligent and progressive men who are anxious to attain the standards of the white man and who will accordingly be an uplift to their people.

You were discontented under former Superintendent Swayne and appear to be no better satisfied now. You have made numerous complaints to the Office, none of which have ever been found to be correct, and you have been the subject of a very unfavorable report by one of the Inspecting officials who visited the reservation, therefore you are advised that henceforth the Office will expect you to cease your efforts to create dissatisfaction and unrest among the Indians and to understand that no exceptions to the Superintendent's

119 authority will be made with respect to yourself; in other words, you are advised that just as long as you remain on the reservations under the control of the Superintendent at Soboba you will be subject to his authority.

The Superintendent will treat you fairly and explain any matter concerning the affairs of the Indians about which you may desire information if you will make your request in the proper manner.

The Office regrets that it is necessary to write you a letter such as the foregoing and trusts that you will so conduct yourself as to give no further cause for complaint.

Respectfully,

(Signed) C. F. HAUKE,
Second Assistant Commissioner.

2—W. E. A.—16.

(Endorsed on back:) 518 Crim. U. S. vs. Apapas et al. U. S. Exhibit 9. Filed March 6, 1913. Wm. M. Van Dyke, Clerk, by C. E. Scott, Deputy Clerk.

120 *Transmittal of Letter from Indian Office.*

Soboba Indian School, California.

SAN JACINTO, CALIFORNIA, *February* 26, 1912.

Mr. Leonicio Lugo, Cahuilla, California.

SIR: I am herewith handing you a letter this day received from the Indian Office. The same is quite clear and the contents of same should be read very carefully by you; and I trust you will endeavor to work harmoniously with this office for the betterment of yourself and the people of the Cahuilla reservation.

Very respectfully,

——— ———,
Superintendent.

Enc.

W. H. S./M. S.

(Endorsed on back:) 518 Crim. U. S. vs. Apapas et al. U. S. Exhibit 9A. Filed March 6, 1913. Wm. Van Dyke, Clerk, by C. E. Scott, Deputy Clerk.

121 Mr. ESTUDILLO: Yes.

Mr. ROBINSON: We offer those, if your honor please, as United States Exhibits 9 and 9A, the letter from the Department being Exhibit 9 and the letter of transmission being Exhibit 9A.

Mr. ESTUDILLO: The defendants object to their introduction upon the ground that they are declarations not binding the defendants in this case, and that they are incompetent, irrelevant, immaterial and hearsay, and the further objection that they are declarations from the Department and Mr. Stanley, and that they could not possibly have any tendency to prove any of the issues in this case.

The COURT: I will overrule the objection and admit the letters, with this statement: The statement made by the Commissioner of Indian Affairs is no evidence against any of these defendants. I admit them purely for the purpose of showing the state of mind that may have existed between the defendant Lugo and the deceased, Mr. Stanley.

Exception taken by Defendant.

Mr. ROBINSON: Yes, and for the purpose of showing what effect, if your honor please, such a reply to the letter of Leonicio Lugo might have had upon *Leoicio's* mind, that is a matter of fact for the jury to pass upon.

The COURT: Yes; but what I desire to exclude from consideration of the jury is the impression that the statements made by the commissioner or assistant commissioner might be any evidence against these defendants, or any evidence of the truth of the statements contained in that letter. I want to disabuse their minds of that fact.

Mr. ROBINSON: That is, that the fact that the commissioner says a thing is so, is not necessarily proof of it.

The COURT: No proof of it at all, so far as this case
122 is concerned.

Mr. ROBINSON: Except what had been communicated to Leonicio in answer to his complaint.

The COURT: Yes, to show the impression it might have made upon his mind.

Mr. ROBINSON: Yes.

I went on the Soboba Reservation in 1902, I think. I know the defendant, Francisco Lubo. Mr. Stanley was made superintendent of the Soboba Reservation in 1907. *d* knew Francisco Lubo about that time. We would at times live there for two or three months at a time, with some relatives, but he was a Coahilla Indian. The reservation was for the Soboba Indians but at that time he would come down and stay with relatives some time two months at a time.

Q. Do you recall an instance shortly after Mr. Stanley was made superintendent of the Soboba reservation when Francisco Lubo came to your house?

A. I do.

Q. Was it in the daytime or night time?

Q. Well, there were two different times. The first time it was the daytime and the second time it was the night time.

Q. Well, the first time?

A. The first time was the daytime.

Q. My sister and myself and the children were playing in the yard. Francisco Lubo was alone. Yes, he is the second one right there. I am not sure but I think that looks like him. I haven't seen him for a long time. I saw him first, he lived at Soboba sometimes. That day he was on the hill back of our house, just raving like a lion and brandishing his arms.

123 Q. What first attracted your attention to him?

A. We were sewing in the afternoon, and I heard an awful noise, a terrible noise, and we ran out; we didn't know what it was; we thought it was some crazy person probably that was there or that came by; we didn't know, we never heard such a thing, and we called the children quick, and we saw them running to the house hollering, "There is Francisco, crazy drunk, coming"; they thought he had a gun; and they came in and we locked up the doors and pulled down the blinds and peeped out, and he came right

up to the window and hollered, "Come out, Stanley, I want to kill you. Come out here, I want to kill you."

Q. Was Mr. Stanley there at that time?

A. No: his office was in San Jacinto at that time, and he was in his office working.

Q. Was anything done concerning that affair afterwards?

A. We phoned to him, and he came out in fifteen minutes and put the man in jail, with the aid of a policeman. He put the man in jail, with the aid of a policeman. He put him in the Soboba jail, with the aid of a policeman, and he was sentenced to thirty days; but he worked it out on the road.

Mr. ESTUDILLO: I move to strike out the lady's testimony, on the ground that it is not binding upon any of the other defendants that were not there, and it is clearly incompetent, irrelevant and immaterial to prove the issues of this case. I understand that these declarations were made, if any, in the absence of Mr. Stanley, and only by one man, and I don't understand that the others were there at that time, and it was a long time prior to the occurrence, which would make it too remote to be part of the res gestæ.

The COURT: They are only binding upon the one man, unless the government expects to prove a conspiracy existed that
124 far back, but I do not presume it does.

Mr. ROBINSON: No, sir.

The COURT: It might show his relation merely as an aider and abetter, independent of any connection with the other defendants.

Mr. ROBINSON: Yes.

Mr. ESTUDILLO: For the purposes of the record, your honor, I move that it be stricken out for that reason, in reference to every other defendant except Francisco Lubo and for the purpose your honor has indicated.

The COURT: I think it is only competent for the purpose of showing this defendant's connection with the commission of the crime.

Mr. ROBINSON: Yes; that is the only purpose of it.

The COURT: And it will not be regarded by the jury as evidence against any other defendant.

Mr. ROBINSON: No, I do not see how it could be.

The COURT: What defendant was this?

Mr. ESTUDILLO: It is Francisco Lubo, the second man.

At that time Mr. Stanley and I both taught that year. Because his office was in town and he had to be there part of the time and I would take the school. Francisco Lubo had one boy in school at that time. After Francisco Lubo worked out the thirty days' sentence on the road, he went back to Coahuilla and he took his boy out of school because he said he wouldn't leave him in school there. He was made. He came to our house on another occasion. It was in the winter time. This was in 1907 when he first came, but when he came the second time it was in the new year, 1908. It was along in the winter time after the new year. It was in the night time. It was in the evening. I would say possibly 9 o'clock. Just the

children and myself were in the house. Mr. Stanley was
125 in the office at San Jacinto. The house was lighted, some of the blinds were up and some of them were down.

Exception No. 18.

Q. What first attracted your attention to this man? Did he come to the door and knock?

A. We heard the same kind of a noise that we heard before——

Mr. ESTUDILLO: Pardon me. We object to that, your honor, as incompetent, irrelevant and immaterial. It has no tendency to prove any of the issues in this case. If it happened at all it was at a period too remote to be of any materiality in this case whatever—in 1907 and 1908.

The COURT: Its remoteness goes to its weight rather than its competency, I think. I will overrule the objection, in connection with the same statement I made a while ago as to the other testimony I ruled upon.

Exception taken by Defendants.

By Mr. ROBINSON:

Q. And did he come to the *from* door?

A. He came around to the side window and hollered out there and beat around on the house and said, "Come out, Stanley, I want to kill you," and just shouted roughly and scared us half to death. He was just like a wild man.

Mr. JOHNSTONE: We move to strike out that part of the answer that he "scared us half to death" as a conclusion of the witness.

The COURT: Motion granted.

Exception No. 19.

Q. What, if anything, was done about that?

A. We called Mr. Stanley, and he came home, and then Francisco was very defiant when he got there, and next morning he banished him from the reservation and told him never to come back.

126 Mr. JOHNSTONE: We object to the witness testifying to anything that took place after the defendant Francisco left her house, on the ground that it is hearsay.

The COURT: I presume she had personal knowledge of some of it.

Exception taken by Defendants.

By Mr. ROBINSON:

Q. Were you present when Mr. Stanley came back and spoke to Francisco?

A. He brought him to the schoolhouse next morning and banished him from the reservation, and told him never to come back, as he threatened to kill him so much, and the first offense he had promised faithfully — reform and never do that again, and never drink at Soboba, but the second offense Mr. Stanley banished him from the reservation. After that he never spoke to Mr. Stanley.

Q: Were you present when Mr. Stanley said that?
A. Yes, I was*y*.
Q. Has he ever been on the Saboba Reservation since then?
A. I think so, probably over night, or in the afternoon, but never to stay like he did.
Q. You have lived there all of the time since?
A. I have.
Q. Have you ever met Francisco Lubo on the road when you were in the company of Mr. Stanley?
A. I have, and we both spoke; but he never passed any recognition whatever.

Mr. ROBINSON: I would like to read Exhibits 7, 8, and 9, your honor, and then proceed with the proof that is found to be connected with them.
(Said exhibits 7, 8 and 9 were thereupon read to the jury by Mr. Robinson.)

By Mr. ROBINSON:

Q. Mrs. Stanley, what was Mr. Stan[illegible]'s temperament as
127 to being excitable or not?

Mr. JOHNSTONE: We object to that as— —

A. No, he was not.

The COURT: I think we better suspend at this time until 2 o'clock.
Mr. JOHNSTONE: Will the question be withdrawn until we make an objection? I started to make an objection while the witness answered.
Mr. ROBINSON: The answer may be stricken out and I will withdraw the question for the present.
Exception No. 20.

MAY STANLEY, recalled by the Government.

Direct examination resumed.

By Mr. ROBINSON:

Q. Now, Mrs. Stanley, what — Mr. Stanley's habitual temp*t*er, as to being violent or equable?

Mr. JOHNSTONE: If your honor please, we object to the question on the ground it is incompetent, irrelevant and immaterial, and no foundation has been laid. What a person's temper might be or his general characteristics might be is not the opinion of one individual, but it is a matter of general reputation. But at this stage of the proceeding I apprehend the government is attempting to contradict an affidavit which has been read in here as a part of the evidence of this case, and if it be for that purpose we object to any evidence tending to contradict that affidavit for the reason that the affidavit itself was read in evidence not as proof of the facts stated therein but simply as being an affidavit which was transmitted by a letter to the Indian Department, to show the state of mind of the

party who transmitted the letter. The affidavit itself is not
128 evidence and never could be evidence. We have a right to have the man who made the affidavit sworn as a witness upon the stand in order that we may cross-examine him, and until such witness is sworn there is no evidence before the jury as to the facts stated in that affidavit, and for those reasons we object to this line of testimony.

The COURT: Is the testimony based upon the affidavit or on the letter?

Mr. ROBINSON: This part is on the letter, your honor; but counsel distinctly declined to stipulate that anybody else was responsible for this affidavit. He would not stipulate it was an affidavit, but stipulated that it was a paper that was sent by Leonicio Lugo in and with a letter which he himself signed, and therefore Leonicio Lugo assumed the responsibility for sending those statements, and in order to get at the temper or feeling of Leonicio Lugo, of course we have to show either that he was doing that which he was entirely justified in doing, and that there was no ill feeling about it, or to show that it was deliberately false, which then would show a condition of malice.

Mr. JOHNSTONE: That would be assuming a fact not in evidence, because it is not proven that these facts were true or false, or that they existed at all, except that it is a statement which was a statement of somebody else, and is not contended on the part of the government to be a statement of Leonicio Lugo. We agreed that the paper or the affidavit was transmitted with a letter to the department. We could not stipulate as to the signature, because it was made by a party whom we did not represent and whom we are unable to stipulate for; and, as I say, the affidavit itself was not read for the purpose of proving a fact, but it was read simply for the purpose of showing the state of mind of the party
129 transmitting the letter, as to whether or not he had a belief at the time that Stanley had a prejudice against him or was, as stated in the affidavit, tyrannical and domineering.

The COURT: Unless counsel connects defendant Lugo in some way with this affidavit further than its transmission I will limit the examination to the contents of the letter written by Lugo himself.

Mr. ROBINSON: In this way we have already connected him, your honor: It is stipulated that he enclosed this affidavit in a letter which refers to it and says "I have attached affidavits here substantiating these charges." Now, it is attached to his letter and referred to in his letter, and he says it substantiates his charges.

The COURT: I will permit you to prove the falsity of charges made by him, but I think it is very doubtful whether you can connect it with the affidavits or not. You might transmit affidavits and base it entirely on hearsay, and you would not be responsible for the contents of the affidavits unless you knew they were false.

Mr. ROBINSON: But we will show that he knew not only the statements in the affidavits, but the statements in the letter were false, and that his letter making general allegations refers to this affidavit as giving the particular facts and circumstances, and that thereby he

assumed the responsibility. He could not in any way have said more definitely that this affidavit met with his approval, that every statement in it was adopted by himself, and he says, "I have attached affidavits here substantiating these charges, and we respectfully ask you to send us some other superintendent."

130 The COURT: You may proceed.
Exception No. 21.

Mr. JOHNSTONE: We have an objection, your honor.
The COURT: What was your question?
(Last question read by the reporter.)

By Mr. ROBINSON:

Q. In dealing with the Indians.

The COURT: Overruled.
Exception taken by Defendants.

A. He certainly had a very good disposition in dealing with the Indians. I can prove that, that he has been most patient and kind throughout. Those who did most against him were the ones he was the kindest to.

By Mr. ROBINSON:

Q. Had you observed his dealings with the Indians in settling their disputes or discussing their disputes?
A. I certainly have, because I was in the office every day.

*m*Mr. JOHNSTONE: We limit the answer to yes or no, and *move* to strike the balance out.
Mr. ROBINSON: The other simply amplifies yes.
Mr. JOHNSTONE: Well, "yes" is the answer.
Exception No. 21.

By Mr. ROBINSON:

Q. Was his manner in dealing with them, and in ruling upon their complaints or matters before him concerning the Indian, habitually arbitrary, or did he give extended consideration to what they said? That is, did he listen to all that they had to say and reason with them?
A. He certainly did.

Mr. JOHNSTONE: We object to that upon the ground it calls for a conclusion of the witness.
The COURT: It does in a measure.

131 Mr. JOHNSTONE: And assumes a state of facts not in evidence.

The COURT: Overrule the objection.
Exception taken by Defendants.

By Mr. ROBINSON:

Q. What was the answer, Mrs. Stanley?
A. I say, he certainly did use patience and consideration with all of them.

Q. Do you know Juan Tortes?
A. I do.
Q. Were you present at any conversation or any proceedings in the office at the Soboba reservation in about March, 1911, concerning the question of getting an Indian Doctor to attend Juan Tortes' father?
A. I was.

Exception No. 23.

Q. What kind of a doctor was under discussion?

Mr. JOHNSTONE: We object to that as being hearsay as against these defendant-, not one of them being shown to be present.
Mr. ROBINSON: It is one of the charges that Mr. Stanley would not let an Indian have a doctor, an Indian doctor of his own choice. We wish to show——
The COURT: You are getting in a great number of collateral issues in this case. You may answer. If you are going through all these issues, I do not know when we are going to get through. You will probably have forty lawsuits in one.
Mr. ROBINSON: We will finish in a very short time. I expect to get through in a little more than a day from now.
Exception taken by defendants.

A. It was not a question of a doctor. Juan Tortes wanted a regular old Indian medicine man, which was against the
132 rules and regulations of the Indian office.

Mr. JOHNSTONE: We move to strike out "it was against the rules and regulations of the Indian office," as not being the best evidence.
The COURT: I will sustain the motion. I will let remain that he wanted to get a regular Indian medicine man.

By Mr. ROBINSON:

Q. Were you present at an interview a couple of days after that between Tefolio Pa and Stanley in which there was a discussion of this medicine man proposition?
A. Yes.
Q. Was Juan Tortes present?
A. He was.

Exception No. 24.

Q. Was there any discussion then as to whether or not a medicine man had been brought into the reservation for the purpose of attending this case, after Mr. Stanley forbade it?
A. There was

Mr. JOHNSTONE: We object to that as being hearsay as against these defendants. It is shown that they were not there.
The COURT: Have you the letter with reference to that?
Mr. ROBINSON: Yes. The man was put in jail for merely speaking of it.
The COURT: You may answer.

Exception taken by defendants.

A. There was.

Exception No. 25.

Mr. JOHNSTONE: That is subject to the same objection, your honor.

133 The COURT: I think you had better ask her in the language of the letter.

By Mr. ROBINSON:

Q. Was it a fact at that time or was it not, that Juan Tortes was sent to jail by Mr. Stanley because he asked Mr. Stanley, in the presence of Tefolio Pa, whether he could not have his own doctor, and for nothing else?

A. He was not sent to jail for that.

Q. Was he sent to jail?

A. He was not sent to jail.

Mr. ROBINSON: Cross-examine.

Mr. JOHNSTONE: We desire at this time, if the Court please, to move to strike out all the testimony of the witness in reference to the conversation had between Mr. Stanley herself and Tefolio Pa, upon the grounds that it is hearsay and not binding upon these defendant-, it being shown that not one of them was present. There has been no connection between the parties and the conversation.

The COURT: The only purpose of this testimony is to show the state of mind that existed between one of the defendants and the deceased, and for that purpose it will be received. The motion will be denied.

Exception taken by Defendants.

Cross-examination.

By Mr. JOHNSTONE:

Q. Mrs. Stanley, you have testif-ed to an occurrence in 1907. You say that Francisco Lubo came to your house and made some threats. What was Francisco's condition at that time as to sobriety or intoxication?

A. He was exceedingly intoxicated, and he was——

134 Q. You say he was exceedingly intoxicated?

A. Well, I did not know the man well enough to know, but I am sure that he must have been intoxicated, the way he acted.

The COURT: I understood the witness to say that he was intoxicated on both occasions.

By Mr. JOHNSTONE:

Q. Was he staggering?

A. No, I would not say he was staggering. He seemed to know where he was going and what he was doing.

Q. He is a Coahuilla Indian, is he not?

A. Yes, sir, he — a Coahuilla Indian.

Q. And this is on the Soboba reservation?
A. Yes, sir.
Q. How far is the Soboba reservation from the Coahuilla reservation?
A. Forty miles.
Q. Did he talk in the Indian tongue, or in the English language?
A. He talked in the Spanish tongue.
Q. What did he say in the Spanish tongue?
A. I cannot tell you exactly what he said, because I do not speak the Spanish; although I understand a little bit of it.
Q. What did you understand him to say?
A. My little boy told me what he said.

Mr. JOHNSTONE: We move to strike out what the little boy told her.

A. My little boy speaks Spanish.

Mr. JOHNSTONE: We move to strike out as to what the little boy told the witness.
The COURT: I will grant the motion.

135 By Mr. JOHNSTONE:

Q. You heard him talk, did you not?
A. I did.
Q. What did he say? What words did he use? You did not understand what he did say, as a matter of fact, Mrs. Stanley?
A. I could understand something that he said.
Q. Tell us what words you understood.
A. Well, he said "Maestro Stanley, vamos te doy matar", something, to come out here. I know when you say some out here And, "I want to kill you," or something like that.
Q. I just want to get at the words that were used, is all.
A. He said, "Maestro Stanley, come out—"vamoss, te doy matar," or something like that.
Q. On the occasion of the second visit he used the same language?
A. Exactly the same words.
Q. After Mr. Stanley had been appointed the agent of the Coahuilla reservation he lived on the Soboba reservation— that is, he had his residence there?
A. He did.
Q. And occasionally visited the Coahuilla reservation?
A. Yes.
Q. Did you always go with him to the Coahuilla reservation?
A. I went a number of times with him.
Q. Can you give us an idea of the number of times you went?
A. I think I went about six times last year.
Q. That is, six times in the period between the times of his appointment and the 1st of May of last year?
136 A. I think so.
Q. Do you know how many times Mr. Stanley visited that reservation?
A. I couldn't tell you now.

Q. About how many.

A. Oh, my! I think he made a dozen trips or more. He must have made more than a dozen trips up there.

Q. When you testify as to the conduct or manner in which Mr. Stanley treated the Indians in hearing their complaints and deciding them you base your opinion on the manner in which he treated the Soboba Indians and not the Coahuilla Indians; is that a fact?

A. That is not a fact. I have seen him handle the Coahuilla cases.

Q. And that is about a dozen times in the time that he was agent of that reservation?

A. No, sir. The Coahuilla Indians are very seldom at Coahuilla. The larger part of the time they are down in the valley. They came to the Soboba office for pretty near everything they wanted, a whole crowd at a time, and all their dealings mostly were done in the Soboba office.

I am familiar with the manner in which Mr. Stanley treated the Coahuilla Indians on their reservation, I have seen him treat them.

Q. And is that knowledge limited to the number of times you visited the reservation with Mr. Stanley?

The COURT: It naturally would be, I presume, or at least these dozen times she was there. I infer that from her answer.

Mr. *th* JOHNSTONE: I think so.

137 By Mr. ROBINSON:

Q. Now, on your visits to Coahuilla did Mr. Stanley meet the Indians in the school house or the council house or whatever it may be called?

A. The Indians absolutely refused to meet him. He went there for that purpose, but they refused to meet him, speaking about Leonicio not letting them, everytime we went there.

Q. That is, the Indians wouldn't come to the meeting at all?

A. The Indians wouldn't come to the meeting at all.

Q. They stayed in their own homes?

A. They wouldn't come, saying Leonicio was their captain, and that they were under orders to obey him.

Q. Mr. Stanley would then go away without meeting with the Indians?

A. He would make a second attempt, and sometimes a third or fourth attempt, but every time they refused.

Q. Can you give us an idea as to when those occasions took place?

A. I cannot.

Q. Can you approximate the time?

A. He took charge of the Coahuilla reservation July 7, 1911, and I can't remember, but some short time after that I think he proceeded up there, and wrote them ahead of time that he was coming and that he would meet them.

Q. And they didn't meet him?

A. They didn't meet him. They said that Leonicio was their captain and he was not their superintendent.

Q. Now, who said that?

A. They always came and told him that himself.

Q. Well, who?

138 A. Well, I think there—I don't know those Coahuilla Indians, you know, by sight, only just by name, but I think there was a Mr. Ignacio Costa that used to be the one that would come and tell Mr. Stanley that.

Q. All you know about that is what Ignacio Costa said?

A. Yes, and what I would hear him say.

Mr. JOHNSTONE: If your honor please, we move to strike out the witness' evidence as to the refusal of the Indians to meet with the superintendent, upon the ground that it is hearsay.

Mr. ROBINSON: It was called out by cross-examination.

The COURT: The jury will consider the answer in the light of the knowledge of the witness and give it such weight as it is entitled to.

Mr. JOHNSTONE: That is all, Mrs. Stanley.

Mr. ROBINSON: That is all for now, Mrs. Stanley.

ADDA A. LIGHT, on behalf of the Government, testified as follows:

By Mr. ROBINSON:

My full name is Adda A. Light, I reside at San Jacinto. I am a school teacher. I am a sister to Mrs. Stanley. I was at San Jacinto in November, 1907. I remember being there on a Saturday afternoon about the 20th of November, 1907. I used to know an Indian by the name of Francisco Lubo. I saw him there on that day. I was in the house. There were there besides myself, my sister, Mrs. Stanley, we were in the house, and the two little children were playing around outside. I first saw Francisco Lubo when I went to the door. I saw him coming down the hill east of the house.

139 Q. What attracted your attention to him?

A. The queer things I heard from the inside, and I heard it for quite a—oh, about five minutes before I stepped to the door, and I told Mrs. Stanley I heard a very strange noise, and she thought she heard one too, and she was very busy, and she asked me to step to the door to see if I could see what it was.

Mr. JOHNSTON: We move to strike that out as hearsay your Honor.

Mr. ROBINSON: What Mrs. Stanley said and what they said can be stricken out.

The COURT: The motion is granted.

By Mr. ROBINSON:

Q. You looked out the door and saw him, did you?

A. I did.

Exception No. 26.

Q. What was he doing?

A. He was standing——

Mr. ESTUDILLO: We object to that as incompetent, irrelevant and

immaterial. Declarations or statements made by Francisco Lubo are not binding at all on any of the other defendants; and on the further ground that these statements were made in 1907, at a period too remote to be part of the res gestæ in this case.

The COURT: Their remoteness only goes to their weight, I think, and the objection will be sustained as to the other defendants, of course.

Mr. ROBINSON: That is, the objection is not sustained as to the question——

The COURT: I mean the jury will disregard it as to them.

Mr. ROBINSON: But that is all we offer it for, for this one
140 defendant.

Exception taken by Defendants.

Francisco Lubo was standing on the hill waiving his arms and talking. He came down the hill and I fastened the doors and windows, while Mrs. Stanley called Mr. Stanley. And by that time he had come to the window of the house. By that time the children had come inside. I called them in before I had fastened the door. I do not understand Spanish. I understood when he called Mr. Stanley, "Stanley." He stayed outside fifteen minutes. He was standing leaning over the fence waving his arms and talking.

ARNOLD A. STANLEY, a witness on behalf of the Government testified as follows:

Direct examination:

My name is Arnold Archibald Stanley, thirteen years of age. I knew Francisco Lubo. He used to stay at Saboba quite a while at a time. He was there about 1907, the last time he went away from the reservation. I was going to school at Soboba at that time.

Exception No. 27.

Q. Do you recall any special instance that remains in your mind that you saw Francisco Lubo?

A. O, he was drunk one time coming down——

Mr. ESTUDILLO: We wish to object to this Witness' testimony the same as we did to Miss Light's.

The COURT: The same ruling and same instructions to the Jury. Exception taken by defendant.

141 My father was William H. Stanley. Became superintendent of the Soboba reservation in 1907, I think. I saw Francisco Lubo there right after the time, I think. I think it was just a short time *after* afterwards, in the afternoon. We were out behind the barn playing, my sister and I were playing and Miss Light saw him and then she came out and got us and made us come in and she closed the door and shut down the blinds and then my mother called up Mr. Stanley. When I was inside of the building I saw him, and this man called him inside the house and he came right down beside the window. I saw him while he was besides the window. We peeped out *at* the blinds. I speak Spanish. Have

spoken and understood Spansh all the time and ever since I was at the reservation. It is about all I did speak. When I was a little boy, I spoke more Spanish than English, understood Spanish on that day. When I saw Francisco Lubo through the window he was speaking, partyly Coahuilla, I guess, but mostly in Spanish. I understood the Spansh.

Q. Will you tell us in the Spanish language what it was he said in effect—that is the substance of what he said.

A. Well, he said quite a bit that I don't remember. One thing he said "Salti Aq ui Stanley, Te voy matar". Those words mean, "Come out here Stanley, I am going to kill you." I saw Francisco Lubo at our house on another occasion. He was there one night. I cannot say how long ago. It was so long ago I have forgotten that. I only remember he was there. My mother and my sister and I were at home that night. He came right down by the same way he came the other time. There was no lights outside of our house around the grounds. We just had the lamp. We could not see him by
142 any light. We heard him and peeked out the blind and then could just make the form out.

Q. How did you know it was Francisco Lubo?

A. About the same way, that he made the same kind of racket and came down from the hill.

Q. You are not certain from any recognition. You could not recognize him, that is you don't remember how, if at all, you recognized him?

A. No, I don't remember. It is so long ago I don't remember.

Cross-examination.

By Mr. ESTUDILLO:

Am thirteen years of age, was born June 29th. Francisco Lubo came over to the house in 1907, I think about November. I was seven years of age. I had seen him lots of times before that. He used to stop for months at the house right above our place. The hill that I spoke of is not very far from the office where I was stopping or living in Soboba. The hill goes up right behind our house. I saw Francisco Lubo in the afternoon the first time and the second time it was in the evening. The first time it was in the afternoon before sundown.

Q. What was he doing on the hill?

A. Well, he was out flashing something that looked like a gun. I remember that very distinctly. There were no other Indians around that hill that I know of. I don't remember how he was dressed. Don't remember if there was a horse standing near by, it was a long time ago. Don't remember whether he had a hat on. I don't remember anything about his appearance at all. I have been talking about this case with my Aunt and my mother. Have
143 not discussed Francisco Lubo's appearance in our house in 1907. We never discussed anything.

Q. Have you ever repeated the language in Spanish that you gave here in evidence today before today to anyone?

A. No, never repeated it. Only at the time that it happened, I repeated it to my mother at that time. In the month of November, 1907, when Francisco Lubo appeared at our house first. I repeated that language to my mother when I was inside. I was inside the house and he came right up to the window and we could hear him very plain, because he was hollering loud. I never talked about the language used by Francisco Lubo to any — else besides my mother. I didn't tell Mr. Robinson about it. Never told Mr. Dorr about it. Never told Mr. Thackery. Never told Mr. Hall about it.

Q. You have never mentioned that language since that first time that you mentioned it to your mother, have you?

A. No.

REGINA RIOS, a witness on behalf of the Government, testified as follows:

Direct examination.

By Mr. ROBINSON:

My full name is Regina M. Rios. Indian of the Soboba tribe. Was born on the Soboba reservation. Lived there all my life. Have been on the Coahuilla reservation a couple of times. Knew William H. Stanley in his life time. He was superintendent of the reservation since 1907. He came there as a teacher. He taught five years. I went to school before he was a teacher there.

144 Exception No. 28.

Q. Were you ever present in the office of Mr. Stanley—that is, the superintendent's office—on the Soboba reservation when Mr. Stanley was discussing with the Indians their affairs and the disposition of their affairs on the reservation?

Mr. ESTUDILLO: We object to that as incompetent, irrelevant and immaterial. It has not any tendency to prove any of the issues in this case, and it has not been shown that these defendant- were there.

The COURT: She may answer the question yes or no.

A. Yes.

Exception taken by Defendant.

By Mr. ROBINSON:

Q. Frequently or——

A. Often.

Q. Have you observed him around the reservation when he was talking with the Indians?

A. Yes, sir.

Exception No. 29.

Q. During all the time you knew him, Miss Rios, what was the nature of his temper as displayed toward the Indians in his treating with them, as to w-ether it was vi*l*lent or quiet?

Mr. ESTUDILLO: Objected to as incompetent, irrelevant and im-

material, calling for a conclusion and opinion of the witness, and a matter, if allowable at all, the jury would be the best judges of.

The COURT: That is the same question I ruled on a while ago.

Mr. ESTUDILLO: Yes, your honor.

The COURT: Objection overruled.

(Last question read by the reporter.)

145 A. Why, he was quiet; mostly all the time with a smile on his face.

Exception taken by defendant.

Exception No. 30.

By Mr. ROBINSON:

Q. In discussing with the Indians the matters concerning their affairs there on the reservation, did he listen to them at length and patiently? And discuss their matters with them, or did he abruptly or shortly tell them what they must do?

Mr. ESTUDILLO: I wish to make the same objection as to the previous question and add to it that it calls for an opinion and conclusion of this witness.

The COURT: I will permit the question to be answered.

Exception taken.

A. He always listened to them.

I know Teofilo Pa. I know where his place is. He has some fruit trees on his place, I couldn't say how many but he has over one hundred trees. He has had them now, this is the third year. Those trees were irrigated from a flume that Mr. Stanley helped him to put up. I saw the pumping plant there work to irrigate those trees. Men worked it under Mr. Stanley. I remember when Mr. Stanley came superintendent of the Coahuilla as well as of the Soboba. Teofilo Pa did not have those trees before that time. At the time that Mr. Stanley took over the Coahuilla reservation, those trees had not been planted by Teofilo Pa.

Q. When were they planted as nearly as you can remember?

A. As nearly as I can remember, they were planted—well, he has had them over two years. I mean two years back. I have

146 seen Teofilo Pa's alfalfa patch. Mr. Stanley planted it for him. Have been all over that Soboba reservation during my life time. Pretty familiar with it. Teofola Pa has lived there as long as I can remember. He has always been there. There are eleven eucalyptus trees on the reservation. There never were as many as five hundred or three hundred. I know Juan Cortes. Remember his father being sick two years. Juan's father had an Indian doctor to attend him. I do not know the Indian name for Indian doctor. In Spanish they call "Echeros," I mean a medicine man. Just cures by feeling and blowing on them and all such things as that, also by sucking the pain out.

Cross-examination.

By Mr. ESTUDILLO:

No, I don't know the Medicine man. I can tell who he is by

looking at him, that is all. I can just tell by looking at him, you know, that that is the same one. I don't know his name. I know he wanted this medicine man because he went and asked Mr. Stanley that he was going to get this man for his father, that was about two years ago. I don't remember what month. I don't remember what day it was. Two years ago, that would be 1911.

Q. How did you happen to be present when Cortes made this request of Stanley.

A. I often went to see Mr. Stanley and I happened to be there that day when he went there. I was not called over there so I could listen to the statement. I was there when he came. He asked Mr. Stanley in the English language Mr. Stanley said to him, "Wouldn't you rather get the doctor for him, I can get the doctor for him." He said it was better for him to get the doctor, because he says the doctor would know more about his sickness. He just urged
147 that way and told him that it was better to get the doctor and Juan said "no" all the time, he didn't want him.

Q. Did he put him in jail after that for it?

A. After that you mean?

Q. Yes, after that conversation about the doctor.

A. Not right after the conversation.

Q. Was Tortes in jail at all?

A. He has been in jail a number of times.

Q. Who put him in jail, Mr. Stanley?

A. Well, different people.

Q. Did Mr. Stanley put him in jail, that is the question I ask you?

A. Nor, sir, I don't think he ever did.

I am a friend of Tortes. Know Will Pablo. Have not discussed this part of the case with him. Have not had any conversation with him in reference to this case, nor have I talked to anyone else about this case. Have not talked to Mr. Hall, Mr. Dorr, Mr. Thachery. Have never told anybody what I know about Tortes.

Q. How did you happen to go and count the eucalyptus trees on the reservation?

A. I just counted them when they asked me the question, because I know the place well. The other kind of trees on the reservation are pepper trees, willow trees, cottonwood trees, elder trees and oak trees. The eleven eucalyptus are not all in one bunch. They are in different parts of the reservation. My mother has one at her house and Juan Tortes has got six. That makes seven, and Bonificio has got two that makes nine and Teofilo has one, that makes ten, and Amarista has one. Donet know how many oak trees there are on the reservation.

148 Redirect examination.

By Mr. ROBINSON:

Q. Do you remember my visit to the Soboba reservation a month or so ago?

A. Yes, sir.

Q. Before I asked you some questions about some of the Indians up there, had anybody ever talked with you about the case at all?
A. You mean about——
Q. Not about the things you have talked about here, but other questions about some of the Indians on the Soboba Reservation. Before I ever asked you those questions had anybody representing the government ever talked to you about the case at all?
A. No, sir.
Q. No, but did I ask you the same questions then as I asked you on the witness stand, or were they about other matters?
A. Why, let's see, about other matters. About some other people.

By Mr. JOHNSTONE:

Q. Who was present when you talked with Mr. Robinson in reference to this testimony you have given here today?
A. Just himself.
The conversation took place at the bungalow at the school house on the reservation. Will Pablo was not there. Mr. Dorr was not there when we were talking, he was around there. I don't know where he was at that time.

149 ROSE SERRANO, a witness on behalf of the Government, testified as follows:

Direct examination.

By Mr. ROBINSON:

My name is Rose Serrano, am a Soboba Indian, born on the Soboba reservation, lived there all my life, was at the Sherman Institute at Riverside for one year. Knew Mr. Stanley all the time he was at the Soboba reservation. Mr. Stanley, superintended or helped the men in irrigating or in plowing and making ditches and in fixing up the land. Have seen him doing that many times. Seen him talking to the Indians and telling them what to do.

Exception No. 31.

Q. No, Mrs. Serrano, when Mr. Stanley was talking to the Indians and directing them what to do, was his temper usually quiet, or angry?
A. Quiet.

Mr. JOHNSTONE: We object to that as calling for a conclusion of the witness, and as incompetent, irrelevant and immaterial.
The COURT: It is, in a measure, calling for the conclusion of the witness, but I will overrule the objection.
Exception taken.

By Mr. ROBINSON:

Q. Quiet, did you say?
A. Yes, sir.
Q. Do you know Tefolio Pa?
A. Yes, sir.
Q. Do you know where his orchard is?

Mr. JOHNSTONE: If the court please, in order to save time, I assume the District Attorney intends to prove by this witness along the lines of the other.

150 Mr. ROBINSON: Yes, sir.

Mr. JOHNSTONE: And it will be understood that the testimony is taken subject to the same objections and same motions and rulings as were made in the testimony of the other witnesses.

Mr. ROBINSON: Yes.

The COURT: Very well.

Mr. JOHNSTONE: So much as relates to that part of it.

Mr. ROBINSON: Yes.

Q. Have you see- any fruit trees on Teofilo Pa's place?

A. No; I have heard of them. I have never been there to see them.

Q. Have you ever been on his place?

A. No, not where the fruit trees are.

Q. Have you been on any part of his place, or seen any of it?

A. Yes, I have seen his alfalfa patch.

Q. What is your mother's name?

A. Anna Maria Casero.

Q. Was it from her place that you saw this other?

A. No, going along the road.

Mr. ROBINSON: You may cross-examine.

Cross-examine.

By Mr. JOHNSTONE:

Q. What do you understand, Mrs. Serrano, by the use of the word "temper"?

A. I don't understand you.

Q. What do you understand the word temper to mean?

A. Oh, by his ways. He was always smiling.

Q. What is that?

A. The man was always smiling and good.

151 Q. He was always smiling?

A. Yes.

Q. And always talked in a low tone of voice?

A. Yes; always joking and laughing, and always acting kind.

Q. Did he joke in the Indian tongue or in the English tongue?

A. In the English.

Q. And he never had any arguments with the men at any time?

A. I never heard of any.

Q. That is, there — never any when you were present?

A. No, sir.

Q. And how many times have you been in Mr. Stanley's presence?

A. Well, I can't tell; a whole lot of times.

Q. Can you estimate the number of times?

Mr. ROBINSON: I don't know whether she knows what you mean by "estimate."

By Mr. JOHNSTONE:

Q. Well, can you say whether it was one, two, five, or the number of times, to the best of your recollection.

Mr. ROBINSON: You have another four syllable word in there now.

Mr. JOHNSTONE: If the witness does not understand she will say so.

By the COURT:

Q. About how often?

A. Oh, about a dozen times or more, I guess.

By Mr. JOHNSTONE:

Q. Well, was it as many as twenty times?

A. Yes; something like that.

152 Q. And that covers a period of how long—from the time you first knew Mr. Stanley?

A. Yes, sir.

Q. And you have known him for five years?

A. No, I have known him for about eight years, I guess.

Q. And you have been in his presence about twenty times in eight years?

A. Yes.

Mr. JOHNSTONE: That is all.

Redirect examination.

By Mr. ROBINSON:

Q. About how many times a day or a week or a month would you see Mr. Stanley around there?

A. Well, every time he came we were around his place most all of the times.

Q. Did you see him every day?

A. No, every two weeks or a month.

Q. You lived off some little distance, did you?

A. Well, we lived at Coahuilla.

Q. Oh, you lived at Coahuilla for a while?

A. Yes.

Q. And over there you saw some of these things, saw him dealing with some of the Indians, did you?

A. No; I *seen* him just go by at our house, when he went by on the road there.

Mr. ROBINSON: That is all.

By Mr. JOHNSTONE:

Q. The only time you observed Mr. Stanley has been while he was on the Soboba reservation, in his treatment of the Indians?

A. Yes, sir.

153 By Mr. ROBINSON:

Q. Do you understand what "observation" means?

A. No, sir.

By Mr. JOHNSTONE:

Q. Well, see, or saw, Mr. Stanley on the Soboba reservation.
A. Yes, over at Coahuilla too I saw a little while ago.
Q. And how many times at Coahuilla?
A. Oh, I don't know. He used to ge there quite often.
Q. Are you related to Celseo Serrano?
A. I am his wife.

Mr. JOHNSTONE: That is all.
Mr. ROBINSON: That is all.

ANNA MARIA CASERO, a witness produced on behalf of the Government, testified as follows:

Direct examination.

By Mr. ROBINSON:

My husband's name is Pedro Casero. I am an Indian of the Soboba tribe. I have lived on the Coahuilla reservation. I have been there many times with my husband. My husband is a Coahuilla Indian. I was acquainted with Ambrosio Apapas while I was there on the Coahuilla reservation. I don't know if he was related to my husband. His wife is a relation of my husband. I saw him often at our house at Coahuilla. I have seen him with a revolver.

Q. How many times?
A. Once when he arrived at my house where I was.
Q. Did you see him any other time except that time when he came to your house with a revolver?

154 A. At other places on the highways where I would see him sometimes on a road. It was a large pistol, (measuring the size by her hands, about that size) I don't know as to feet as to measurements (she indicated about a foot). I was acquainted with William H. Stanley. I lived on the Soboba reservation while he lived there. I would see him at the Coahuilla reservation sometime when I would go there. I never saw him talking with the Indians. Sometimes to the Soboba Indians.

Q. When did you leave the Soboba reservation? And go with Pedro Casero up to the Coahuilla reservation?
A. I only would go there—would stay there 2 or 3 weeks at a time—that is all with him. I cannot tell when I married Pedro because I cannot tell as to the year or count months.

Exception No. 32.

Q. What was Stanley and the Indians doing when you saw him talking to them on the Soboba reservation?

Mr. ESTUDILLO: We object to that as incompetent, irrelevant and immaterial. It has no tendency to prove any of the issues in this case, what he was doing there. He may have been figuring on a divorce suit.

The COURT: You may answer the question. (Exception taken) (Last question read by the reporter).

A. Many things many actions. He was advising the Indians to work.

Exception No. 33.

Q. At those times was Mr. Stanley's temper and manner towards the Indians violent and severe or kind of quiet?

Mr. ESTUDILLO: We object to that on the same grounds as we did to the question asked the previous witness, your honor.

The COURT: Same ruling, with the same instruction to the jury.

A. I cannot understand that Spanish. A good man—if I might say good or bad. That is about the only words she can understand.

155 Q. That does not quite answer the question. We are talking about his temper. How did he act? How did his temper appear?

A. A very good man—very good.

Mr. JOHNSTONE: We submit that is not responsive to the question and ask that it go out, and a conclusion of the *the* witness.

The COURT: I will permit it to stand. (Exception taken.)

Mr. ROBINSON: Cross-examin*ation*.

*X*ross-examination.

By Mr. ESTUDILLO:

I was at Coahuilla the last time before the death of the deceased; saw that Apapas had a revolver at the time that I was there.

The COURT: I think that circumstances is entirely too remote to be of any value for any purpose. He might have had a gun and he had a perfect right to carry it, probably, if he was carrying one.

Mr. ESTUDILLO: We realize that, your honor. The only thing is *is*, it might leave a wrong impression with the jury.

Mr. ROBINSON: Only this, your *n*onor. I am putting in the whole case now to show that he had a gun. I understand that there was a contention that he had no gun of his own.

The COURT: You have not shown either time or place or any particular kind of a gun. You cannot convict a man of murder on such scattering testimony as this.

Mr. ROBINSON: But we expect to prove the possession of one of similar appearance at some other time.

The COURT: You may proceed with the examination.

I cannot say what month what year or what date when I was at Cahohilla and saw Apapas with a gun, but it was before the time of the death of the deceased. It was close by, about 2 weeks. That would be 14 or 15 days. Two weeks are fourteen, I cannot count very well, but 14 days. I cannot tell what month it was

156 when I was there, because I cannot tell of the dates. I cannot count as to dates.

Q. Where was Apapas when you saw the gun.

A. He arrived at my husband's house, at my house, at Coahuilla.

My house is far away from the school house at Coahuilla. Apapas came to my house in the morning in day time, on horseback, had the gun strapped to his waist.

Q. Was the gun black or white?

A. The color of this table here. The scabbard, and then he had cartridge belt and it was black like this table. I understand what a scabbard is.

The COURT: Is this testimony a rebuttal or a circumstance pending to show that the man is guilty?

Mr. ROBINSON: It is a circumstance pending to show that he had a gun, because we are going to introduce evidence to connect that at the time of the shooting with a similar gun.

The COURT: Go ahead.

Apapas did not have a coat on. Did not take the gun out of the scabbard to show it to me, nor to anyone else while he was there visiting. The revolver was in the scabbard all the time Apapas remained at my house. He only remained there a while and left. I don't remember very well how long I remained at Cohauilla. I saw Apapas with the gun, two or 3 days. Do not live at Coahuilla. I have always gone there because my husband has cattle over there and travel back and forth all the time. Have not talked with anyone about this case. I don't remember talking with Mr. Dorr about this case. I cannot talke English. I cannot talk with an American. None but this one that is here. (Indicating Mr. Robinson.) I have talked to Mr. Robinson. I don't know whether the pistol Apapas had that day was loaded.

Q. Did you ever see Apapas have a revolver? At any time before this day that you speak about?

A. I don't remember. The color of the handle of that
157 revolver was black.

LOUIS MAJEL, a witness on behalf of the government testified as follows:

Direct examination.

By Mr. ROBINSON:

My name is Louis Majel, I live at Soboba, before coming there I lived at Rincon in San Diego County. Am the only person by name of Louis Majel on the Soboba reservation. Am married. My wife is an Indian of the Soboba tribe.

Exception No. 34.

Q. Where you ever present at a meeting of any of the people of Soboba after you moved there in which the people of Soboba decided that you should not live upon the Soboba reservation?

A. Yes, sir.

Mr. JOHNSTONE: We object to that and move to strike out the answer on the ground it is incompetent, irrelevant and immaterial to any issues in this case, as to what the people at Soboba sought to do with this witness.

The COURT: I do not know what it is leading up to.

Mr. ROBINSON: It is part of the description of this man, to show that he is the man who is meant as being the one whom Mr. Stanley favored because of a woman, that *that,* as a matter of fact, he was married to the woman, but Mr. Stanley permitted him to live on the reservtion on account of being married to a woman who had a right to live on the reservation, when, as a matter of fact, he was not married to her.

Exception No. 35.

My wife's name before I married her — Isabel Alice. Knew Dr. Wright, the Superintendent on the Soboba reservation in 1906.

Q. I show you a paper, (handing same to witness). Did you see the person who wrote the name down there, write it on a paper.

A. Yes, sir.

158 Dr. Wright wrote it and gave it to me.

Q. I show you another document ans ask you if you saw the person who wrote the name on the line below thes typewriting. Write that name (Handing paper to witness).

A. Yes, sir. I don't remember her name, she was the clerk over there for Dr. Wright.

Mr. ROBINSON: We will offer this paper in evidence, the first paper.

Exception No. 36.

Objected to by counsel *by* defendant as incompetent, irrelevant and immaterial, as it has no tendency to prove any issues in the case and because it is no evidence of the fact of marriag-. Objection overruled by the Court, to which ruling of the Court defendant at the time excepted.

Mr. ROBINSON: He will testify I believe that he was married to this woman and I will show that he was duly and regularly married by this license.

Q. When did you marry Isabella Alice?

A. I don't quite remember, it was in 1905.

Exception No. 37.

Defendants moved to strike out the answer of the witness on the grounds that it was conclusion and opinion of the witness as to what a marriage real-y is, which motion was denied by the Court and to which ruling Defendants at the time excepted.

The priest married me at Soboba.

Cross-examination:

I don't know what the name of the priest was that married me. I don't know whethere he was an American or not. He talked English. I know what the County Clerk's office is. Did not go there to get a license. I am not a member of the Soboba tribe or Coahuilla tribe, I belong to another tribe. The priest who married me gave me a paper.

159 By Mr. ROBINSON:

Q. Is this the paper, (handing paper to witness.)
A. Yes that is the paper.

Paper offered in evidence and admitted for what it is worth, and Marked "United States Exhibit No. 10."

ANTONIO S. CONTRERAS, a witness on behalf of the government testified as follows:

Direct examination:

My name is Antonio S. Contreras, live in Coahuilla, lived there in May 1912. Know Pablino Lubo. On the first — May 1912 I was working on the road on the place what they call the Wilson Grade, sleeping at Bradford's place just on top of the grade. That is near Coahuilla about 4 miles away from the line of reservation, on the road in a direction going to San Jacinto and Hemet. Frank Clark and William H. Hardy were working with me. No Indians were working with me just white men. One Indian was working there for Mr. Bradford. His name is Pablino Lubo, one of the defendants in Court, (Indicating). That one that has got the blue shirt one. I had a little conversation with him. At the time when he was conversing nobody was present. Mr. Clark was outside cooking supper for us. We were inside of the barn, right on the inside of a barn, we were just sitting down there until we could get the horses, you know. He was sitting down there to be called for supper from Mr. Bradford's house.

Q. What was said, what was the conversation?

Exception No. 38.

Question objected to by counsel *by* defendants on the grounds that it hearsay as to all of the Defendants other than Pablino Lubo and upon the ground that it is not part of the res gesta- on the further ground that it does not prove any conspiracy or does not prove any of the allegations of the indictment in this case.

160 The objection was overruled by the Court to which ruling of the Court defendants at the time excepted.

By Mr. ROBINSON:

Q. State what the conversation was Mr. Contreras.

A. The conversation was—at first he asked me when was Stanley coming up. I told him I did not know when, but I heard say that he was c-mong up to the Coahuillas. He said, well, I am going,—he is coming over to brand them calves and colts, and take them calves away from us. I says, I don't think so, that he will do that. I heard — say that he is coming up to brand them bulls, put the "I D" brand on. That means,—I made him know what that meant, "Indian Department."—And he insisted——

Mr. JOHNSTONE: We want to know what he said, not what he insisted.

The COURT: Yes, state what he said.

A. He insisted that he was coming to brand calves and all, trying to take the cattle away from them. I told him that he never,—I told him that Stanley was a good man, and he never thought about it; for him to forget anything like that, not to say anything like that.

Mr. JOHNSTONE: I move to strike all that out as incompetent, irrelevant and immaterial, and hearsay.

The COURT: You just state what he said. Tell only the conversation necessary to explain.

Mr. ROBINSON: I think his conversation is important too. I do not want to anticipate what he is going to say——

The COURT: It possibly may be, but the principal thing is what the other fellow said.

A. Well, he said, if he comes up we are going to kill him. I told him not to think such a thing like that, because Stanley was an honest man, and he would not try to do anything out of the way, because he was ordered from the government to brand
161 them bulls. So I tried to make him forget what he was saying, but he insisted, four or five times he repeated it to me.

By Mr. ROBINSON:

Q. Did you have any conversation with him about Stanley, or when Stanley was coming up after that?

A. The next morning he asked me if Stanley was coming up that day. I told him I did not know, but during the day, in the afternoon, he was down at the grade. We used to take our lunch for noon from camp, and in the afternoon Mr. Stanley and Celso Serrano came up, you know, going up to Coahuilla, and that same afternoon when we got back to camp Pablino was not there. He was gone, just as soon as he seen Mr. Stanley pass.

Mr. ROBINSON: That is all. Cross-examination.

Mr. JOHNSTONE: We move that the testimony be stricken out as to all the defendants other than Pablino Lubo, and the jury instructed that the evidence shall only be evidence against the party making the declaration, and that there is no connection shown with the others.

The COURT: That is all, unless the conspiracy is finally established.

Mr. ROBINSON: I do not understand, your Honor, that is to be stricken out.

The COURT: No, I said it is only binding against the party making the declaration, unless the conspiracy is finally established. (Exception taken.)

Cross-examination:

I don't remember when the conversation took place. By seeing my papers I could find out the very date. I could tell by reference to the time Mr. Stanley was killed. It was that month that we was working there. That night Mr. Stanley went up to Coahuilla

he had that conversation. The nesxt day Mr. Stanley went up. I don't remember what date Mr. Stanley was killed on. I think it was in April. In the early part of April. I don't remem-
162 ber whether it was the first or second I can't remember. I never took no pains to have it written in my book, and as I am alw-ys busy I never hardly pay any attention to.

Q. But it was either the first or second of April to the best of your recollection now?

A. I don't know whether it was the first or second. It is the early part of April.

Q. It came near the first of April? Then it was two days before that that you had the convessation, or on the second daye prior to the date that Stanley was killed that you had the conversation?

A. I don't know whether I had the conversation the last day of March. I don't know whether I did or not. I know the circumstance more or less. I heard of his being killed. I heard he was shot. I heard it about the time. Two days before that I had the conversation, I think. That would be around the last day of March, I think, or the first day of April. I am not a Soboba Indian. I am not an Indian at all. The conversation was in the Spanish tongue.

Q. What was the occasion of Pablino talking to you?

A. Oh, he just wanted to know about Stanley. When he was coming up. I told him I did not know. I was not connected with the Indian Department.

Q. How did Pablino come to ask you about the movements of Stanley?

A. Well, he was inquiring there. He knew, you know, that they were expecting Stanley to come up. We had been working at that place 3 or 4 days at this time. I came from my house to work *the* there. My house is up about 4 miles east from the village of Coahuilla. I had known Pablino before that time about 3 years. Had worked together a little bit. Was on friendly terms
163 with him. Never had any difficulty or argument with him. The killing of Stanley was told to me by the officer.

Q. The officers told you about the circumstances of the conversation you had with Pablino.

A. No. They told me when we were working on the road there they come up and they were coming—going pretty fast, and they stopped and we asked where they were going. And the *the* officer from San Jacinto, he said, "why Stanley is shot." I did not detail to them the conversation I had with Pablino.

Q. Who did you first tell after that instance about this conversation you have had with Pablino.

A. Nobody.

Q. Nobody at all?

A. I told Mr. Stanley when he was going up. Did not tell Mr. Stanley that Pablino was going to kill him. I told him that I heard say that the Indians was a little dangerous over there. He ought to have a couple of white officers to protect him. That it

was a little bit dangerous up there by the way I had heard say. I saw Stanley about 2 or half past two in the afternoon. That place is from the Coahuilla reservation about 16 miles more or less. Stanley was in a light rig, two horse rig. He drove on in the direction of Coahuilla. The road leads straight to Coahuilla from there, it is a mountain road, in some places it is a fair road, and others pretty rough. It was pretty rough at that time in some places. We were fixing it, you know. The conversation with Stanley lasted about 5 minutes. I met Stanley there. I was introduced to him. I got acquainted there with him. I just met Mr. Stanley ther- for the first time. He stopped and talked there with Mr. Frank Clark. He was acquainted with Mr. Frank Clark. He was standing beside Mr. Clark and he instroduce- him to me. We were drilling and blasting and grading on the road. Mr. Clark was in the
164 same work. He had a team on the road, but he and I were mostly together with the drag and scraper. When Mr. Stanley drove up I was 4 or 5 feet from Mr. Clark.

By Mr. JOHNSTONE:

Q. How did you come to be a witness in this case?

A. Well I was called to this case. I have talked to this mane here about this case.

Q. Was it Mr. Dorr. I don't know.

A. I don't know. I am not acquainted with the people I did not see him but once.

Q. Did you see the man in the courtroom. Will you stand up Mr. —— (Mr. Dorr stands up). Is this the gentl*a*man you talked with. Will you stand up Mr. Dorr?

A. I could not swear. There was another man besides him but I can't place him I did not look at him very well. The other man was present when I talke*m* with Mr. Robinson. That conversation took place in this building. It was on Monday of this week. They are not the only persons with whom I talked in reference to the conversation. I was talking to Mr. Chambers on the road co-ing down from Hemet. Did not detail the conversation to him. I told him I might be taken up in Los Angeles. I told him because I know a little about it what I heard an Indian tell before Stanley was shot. I did not know the trial was comin- on in Los Angeles. I had to come. I was bring- in my wife, helping her with our baby.

Q. Well did you state to Mr. Chambers that you were coming down to the trial or that you thought that you would be a witness in the trial of the Indian?

A. No, I told him, I think I may be, I did not know, they might take me up. I would not like to go, because I have got to attend to *such much* things on the ranch, but I am going over there to
165 stay a couple of days. I just want to take my wife down to see if she would be all right and come home. That conversation with Mr. Chambers was last Sunday. I was subpœn-ed on Monday. I was just comin- in here with my wife and helping her with the baby, when the card was handed to me. Have not discussed my evidence with my wife. I told her I was not at my

house you know, I says, whatever you know all you ha-e to say is to tell the truth, and whatever I know all I have to say is to tell the truth. I told her I met Mr. Stanley.

The COURT: Perhaps we had better have an interpreter. It seems to be awfully hard for the witness to understand these questions.

Interpreter called, Ralph Dominguez Bailiff, acting as interpreter.

I have not told my wife any conversation. I told her that I had seen Stanley and knew him. That I had a conversation with him. I told her part of it. I told her that I though- he was a very good man from appearance sake. As I figured that he was a good man.

Q. Did you tell her anything about the conversation that you had with Mr. Stanley with reference to what Pablino had told you?

A. Yes sir. I told her that Pablino had said that Stanley wanted to come and brand all the calves, that if not all I *tod* told her in reference to Stanley. I visited Pablino at his house once and I went there on business in company with my wife to buuy string beans and cab-ag*ges* from him about 2 years ago. About the middle of July. Pablino is a man that farms and he raises those things like that. I got the string beans and cab-ag*ges* that I went to buy from him and he made me a present of tomatoes. He went out and picked them for me. I did not go into the house. The exact
166 location of the building in which I had the conversation with Pablino was at the place of William Bradford. We were not working on the road together.

J. F. DURLIN, a witness on behalf of the government tes*it*-ied as follow*ed*.

My name is J. F. Durlin, Deputy United States Marshal*l* in the Souther- District of California. Went to Riverside about the 6th of May, 1912. At that time I visited the sheriff's office. United States Exhibit 5. A revolver was show- to witness, which witness said he had seen before. I first saw in the sheriff's office at Riverside. I took the number at the time the gun was handed me then and there. Sheriff Wilson and Deputy sheriff Nelson and 2 of the defen-'ants Apapas and Francisco Lubo were present. I had a conversation with them. The gun was there in the room, it was brought in at my request. I had a warrant for these 2 men and asked that they be brought down so that I could talk with them. Leonicio Lugo was not there, I did not see him. The defendants Apapas and Francisco Lubo and Gabe Costa were there. I don't remember Leonicio Lu*bo* being there now. He might have been on the outside. He was about there, but I could not say he was in the room, I don't remember. This gun was shown to the defendant Apapas. I asked him if he ever saw that gun before.

Exception No. 39.

Q. What did he say if anything.

Objected — by counsel*s* for defendant- on the grounds that no proper foundati*l*n was laid for a confession as there is no evidence

to show that there was any *were not* inducement to im-unity offered. The objection was overruled by the court to which ruling of the Court the defendant- at the time excepted.

A. He said yes, that he had seen the gun before. He answered first and I asked the direct question. "Did you ever see this gun before?" And he said "Si" and that is the Spanish for
167 "Yes." When the gun was shown and these question- asked defendant Apapas looked at the gun.

Q. And did he make any motion or gesture towards the gun.

A. Yes, sir. (Indicating) "Si."

United States Exhibit 6, being 6 shells 4 empty and two loaded cartridge was shown the witness, and asked if he could identify them.

I recognized marks on each one of them. I made those marks in the Federal Grand Jury room. Up to the tieme that I made those marks in the Grand Jury room they had been in my possession. I got them from the Sheriff of Riverside, on the occasion of which I have testified. They are in the same condition with the exception of the mark I put on them when I got them from Sheriff Wilson. I marked the 2 cartridges, they were in the gun when I received them.

Cross-examination.

By Mr. ESTUDILLO:

I am Deputy United States Marshall. Did not sit in the Court room the other — when some of the tes-imony was taken. Just yesterday morning when Mr. Johnstone explained to me that the witnesses were to keep out, I did not know what was going on. I don't remember now more than just a word or two. I did not know that they had been ordered out. He told me so as not to embar-ass me and I got up and left. The exploded cartridges were in my possession from about 1 o'clock May 6th, 1912, till the following day between 2 and 3. I kept the cartridges about 24 hours. The gun was turned over to me over in Riverside and I brought it in to Los Angeles and the next day the investigation was on when I brought it over.

It was stipulated that the occurrences took place at Coahuilla.

It was stipulated that a plat of the building was substantially accurate.

168 JOHN LARGO, a witness on behalf of the government testified as follows ("Condino Hopkins" sworn to interpret English into Coahuilla and Coahuillan into English):

My name is John Largo. I live at Coahuilla Reservation. I work in the Government service. I am a police man on the reservation at Coahuilla. Have been there four years. Live near the school. Saw William H. Stanley May 1st, last year. He came over the reservation that evening. He got there after four I guess. He gave some orders. I went over to the house of Juan Costa to carry

out the orders that evening. I saw all the people over there. All the Coahuilla people over there at Juan Costa's house. There was Cornelio, Leonicio, Pablino, Charlie Arenas, Cervantes, Agapito, Juanito Casero.

Exception No. 40.

Q. What is Juanito Casero? what is his business or profession?

Question objected to by counsel for defendants as incompetent, irrelevant and immaterial, on the further ground *the* Juanito Casero does not figure herein whatever. He is not a defendant.

The objection was overruled by the court on the grounds that he presumed that it will be shown to be material later, to which ruling of the court the defendants at the time excepted.

A. (Through interpreter.) A doctor.

By Mr. ROBINSON:

Q. He is a doctor? Do you mean he is a physician or a medicine man?

A. (In English.) A medicine man. I remember that Adolph Lugo, Augustin Hamilton, Santos Lubo, Pedor Casero, and
169 Francisco Lugo were also there. About twenty-seven of them.

Exception No. 41.

Q. Twenty-seven. What were they doing over there, John?
A. They had a fiesta there.
Q. What were the people doing, anything?

Question objected to by counsel for defendant- as incompetent, irrelevant and immaterial and not connected with the issues of the case.

The objection was overruled by the court, to which ruling of the court the defendants at the time excepted.

A. (Through interpreter.) They were having supper that evening and at night *there* were dancing. They were dancing the old-time war dance. *There* old custom, the war dance.

Q. Did you have any conversation with Cornelio Lubo?

A. He told Cornelio Lubo after the dance was over, everything. He told him that Stanley wanted him at 9 o'clock in the morning and for him to be there.

Q. Is that all you told him?

A. (In English.) Yes, that is all I told him.

Q. To be where?

A. (In English.) To be at the school there, at the office. I told Dolph Lugo I did not tell anybody else, just the two men. I went home to bed at eleven o'clock. The people were still there when I left, singing. They started to sing and then I went to bed. I got up in the morning at six o'clock, half past six. I saw some of these defendants that morning before breakfast standing where Juan

Costa's barn is, a quarter after eight o'clock, about 28 of
170 them. I can tell. Yes, I can tell the names, as near as I can.
Pablino Lubo, Pio Lubo, Agapito Lubo, Charley Arenas, Carvantes Lubo, Francisco Lubo, Juan Costa, Ignacio Costa, Juanito Casero, Fred Caseror, Pat Casero, Augustine Hamilton, Ignacio Guache, Calisto Tortes, Pedro Casero. I cannnot think of any others. They were standing right together. I don't know what they were doing. I just saw them standing over there, from my house. I didn't know what they were doing. They were standing in a crowd. Leonicio Lugo was there with them.

(Through interpreter.) After that he saw them going to the school house. Cornelio Lubo in front and Ignacio Lugo and Juan Costa were ahead. I was at home eating breakfast; saw them through the window. I was eating breakfast quite a while, and after that I went to the school house. I went in. Mr. Stanley was there and the other white men were Carl Stevens and Pederson, the farmer. There were Indians in the room.

Exception No. 42.

Q. Were all of these defendants there?

The question was objected to by counsel for defendants on the grounds that it was leading and suggestive, which objection was overruled by the court and excepted to by the defendants at the time.

A. (Through interpreter.) Yes, sir. They were all sitting on the desks in there.

(Witness was shown a diagram, or so called map on the blac board, purporting to be a map of the school. He identified the school house, the front steps, the porch, the hall way, the desks, the big stove, the teacher's desk, the organ, the chimney, the little windows high up in wall, the black boards, and the door
171 that goes back in the kitchen, and the closets.)

I know the kitchen back of the school room and the two closets, and the fence over there and the fence over here. Mr. Stanley was here behind the teacher's desk. Leonicio Lubo was at this place on the map marked with the letter A. I was sitting at this place marked with A1. (Witness identi-ed a place on the map to show where Pedersen was and where Stevens was, and pointed out where Mr. Stanley was sitting.) The Indians were sitting out here all in here. (Witness pointing to all the desks.) Juanito Casero the medicine man was right there behind Leonicio. Juan Costa was behind Juanito Casero. When I went in there, they were talking. The people doing the talking were Agapito Lubo, Leonicio, Charley Arenas, Pablino Pio, Santos, Cervantes. They were talking Indian to Ignacio Costa, and he was interpreting for them. I have known Leonicio Lugo since he was a little kid. He speaks English. He did not speak in English to Stanley that day, he was talking in the Coahuilla language. I do not know who told Ignacio to interpret. I understood English and the Coahuilla tongue. When I went in I heard Sanches talking, he told Ignacio to interpret to

Stanley that they heard that he was coming to brand the bulls, the government bulls. It was Santos Lubo who said that. All the defendants were talking. They were all in there at the desks and some were sitting behind in the chairs.

Q. Did you hear any persons in the room speak who were sitting at the extreme read end of the room back there?

A. No, sir, nobody said nothing. They were all laughing.

Q. Did you hear everything that each one of these man,
172 the defendants, said while they were in that room?

A. (In English.) Yes.

Q. Hear it plainly?

A. Yes, sir, I heard it plainly.

I heard everything that Stanley and Ignacio said. Ignacio interpreted into English what Santos told him to ask Stanley in reference to branding the bulls. Stanley said he was coming to brand the bulls. Santos said that he knew that he was coming to brand the bulls, that he had one bull belonging to the government in his pasture. Then he told Ignacio to ask Stanley to whom the bull would belong after it was branded. Stanley told me that it will belong to the government but they will belong to the Indians just the same. They will have them on the reservation so they can raise good cattle. Then Sanches said if he "brand that bull he could take him out," he don't want nobody else's in his place. Sanches said that in Indian, that was interpreted to Stanley. Leonicio told them "You fellows had better think what Sanches says about the bull."

Q. Well, what did the others do after the suggestion was made to them?

A. Then after the others, they said if Stanley brand, the cattle, I mean the bulls, he can take them away.

Q. Did Leonicio say anything about what any of them should do?

A. He told them they had better go and get the bulls and drive them down.

Q. Did he say that in the English language or in the Indian language?

A. Indian language.

Q. Was what Leonicio said to the other Indians about
173 driving the bulls down interpreted to Mr. Stanley into English by Ignacio or anybody else?

A. Yes sir. Ignacio interpreted it, as to what Leonicio said.

Q. And what did Mr. Stanley say to that?

A. (Through interpreter.) Mr. Stanley told him that he didn't have no authority—didn't have no right—to take the bulls that day.

Q. To take the bulls where?

A. (Through interpreter.) He didn't say where to take the bulls, but he was going to write to Washington to find out where to take the bulls or whether to keep them there.

Q. About how long after these Indians went into the schoolhouse was it that you got there yourself, John?

The INTERPRETER: How is that?

By Mr. ROBINSON:

Q. About how long after these Indians went into the schoolhouse did you get there and go in yourself?

A. (Through interpreter.) He went in at half past eight. After he got through with his breakfast he went in.

The COURT: That does not answer the question. How long were the Indians there before you went there?

A. (In English.) About 25 minutes. (Through interpreter.) They were in there 25 minutes.

Q. Now, what was the next thing you heard them talk about after Mr. Stanley said he would write to Washington?

A. (Through interpreter.) They didn't pay attention to him what he said, but they said they will go after the bulls and get the bulls and drive them down.

Juanito Casero never talked. Mr. Stanley told him about the calves, that they belong to them, that they can sell them or
174 kill them and have beef, whatever they please with them.

Charley Arenas told Ignacio to tell Mr. Stanley what they have talked over there that morning, this morning. Ignacio did not translate it. He said to the interpreter, Ignacio Costa, that Mr. Stanley wouldn't arrest him and that he should arrest them. Charley Arenas made that statement. I heard Agapito say the same thing. He said what they had said before to take him outside. I couldn't hear what Pablino said because too many were talking.

Q. To take who out.

A. (Through interpreter.) He didn't say, but he said that,—what they had said that morning.

Q. Well, what did he say about what they had said that morning? Can't you tell us in English what *is* was that they said?

A. (In English.) Well, he didn't say anything, he just say that is all, just told the interpreter to tell Mr. Stanley what they had been talking that morning.

Q. Well, what did you say Agapito said about taking somebody out?

A. No, I said Agapito said the same thing, the same word, what Charley said before, you know.

I heard Pio s say "If those fellows are afraid, I can drive him out by the hair." He said afraid of Mr. Stanley and was talking to all those that were inside there. He said, "If you fellows are afraid of him, I will drive him outside by the hair—drive him out." Nobody told Stanley what Pio said about driving him out by the hair. That was said in the Indian language.

Q. Then after Pio said that, what happened in the room?

A. Well, they said they were ready to go out and get the-re
175 horses and go after the bulls and bring them down to the school.

Q. Did they say what they were going to bring them down for?

A. Yes, they said they would bring them to Stanley and he was going to brand them and then after he branded them they were

going to drive them out from the reservation. That is what they say.

More than one said that in the Indian language. They said they didn't want Celso Serrano to be forest guard or a policeman either. Mr. Stanley then said Celso Serrano was appointed forest guard for Coahuilla and also his private policeman. He read a commission to all of the people. He read lots of rules to the Indians about the road and about the fencing and everything like that, about changing the road. These rules and the commission were interpreted to the Indians by Ignacio Costa.

Q. While he was reading the rules did anything happen in the room? Did the Indians stay there and listen to him or talk or what did they do?

A. Yes, they listened to him.

Q. Then what happened?

A. Well, after they got through with that they all walked outdoor, out of the school.

Q. Did any of the Indians say anything before they walked out?

A. Well, they say they were going out to get their horses and bring the bulls down. That is what they say.

Q. Did they all get up together?

A. Yes.

Q. Or get up in a crowd, I mean?

176 A. Yes, every one of them get out, outside.

Q. And they started out?

A. Started out.

Q. Now, as they were going out of the door did Mr. Stanley say anything?

A. Yes.

Q. What did he say?

A. He called Cornelio. He said, Cornelio, come here, I want to see you and talk to you, and Cornelio did this way (indicatin-).

Q. Turned his head back?

A. Turned his head back, yes, and then he didn't say a word, he just walked out.

Q. Cornelio walked out?

A. Yes, and he called him two times, and he didn't pay any attention, just walked out.

Q. Then what happened?

A. Then Mr. Stanley told me to tell Cornelio to come back.

Q. And what did you do?

A. I went over to Cornelio there, and I got *two* him before he get out from the door.

When I got to Cornelio, he was right here (indicating) his hat was hanging right here. There are pegs all along the walls to hang the children's hats on. Cornelio was right here close to the wall.

Mr. ROBINSON: We will place an "O" *o* right at the place where Cornelio was.

When I got to the door, I told Cornelio to come back, Mr. Stanley

wanted to talk with him and then he pushed me back against the door.

177 I went back to Mr. Stanley and told him that Cornelio didn't want to come. Mr. Stanley said, "John, you go and bring Cornelio in." Cornelio then was out on the ground, on the walk half way between the front gate and the front porch.

(Agreed that the distance from the porch to the gate was approximately fifty-five feet.)

When I saw him, at that time, he was alone. I was standing right in the front ground there, in the front part, when he passed on. When I went after Cornelio there were lots of them there. I passed a lot of those who had been in the school room when I went after Cornelio. I got him by the shoulder this way in the back, I said to him "Cornelio come back, Mr. Stanley wants you, you had better come back." He didn't say a word, he just kicked me back when I had him behind. Kicked me right here on the left shin. He turned back to me, he tried to kick me you know, and I stepped to one side. He done this way and tried to hit me (Witness raises his right hand). Then I jumped and then Francisco was the one that got hold of my gun here. I had my gun right here. I always carry it on this side. After Cornelio tried to kick me they came pretty close to me, all of this crowd.

Q. Then what happened?

A. Well, you know, I jumped to one side, and then Francisco got hold of my gun and I let Cornelio go. I did not look for Cornelio any more then. He just got hold just at the time when I pulled out my gun, and I got a hold of it too. And then some of those other men came in and got a hold of it too.

Francisco was the first one, and then Cervantes was the next, and Pablino, Pio, Agrapito and Cornelio,—six. (Witness identifies Cornelio, Francisco Lubo Pablino, Agrapito, and Pio Lubo, and

178 Cervantes) these were the six that tried to get my gun and hold on to me. (Witness identifies United States Exhibit 5 as his gun.) That is my gun, have had it two years, got it from a forest ranger, its calibre .41.

Q. I show you U. S. Exhibit 6, being some shells and two loaded cartridges, can you state whether they are the kind of bullets you used in that gun?

A. Those are the ones.

They are the kind that I use in my gun. Had it loaded with that sort of bullets that day. I always have it loaded. I carry it always loaded. Francisco took the gun away from me and then they knocked me down on the ground. (Place where witness indicated was marked with a square and cross in it.)

They had me down there, I tried to get up, you know, and that Agrapito kicked me right there in the neck once. Then Cornelio tried to kick me, pulled up his foot this way, but he did not k*k*ick me. He did not kick me, he tried to kick me but he did not. Cervantes, Pablino and Pio were holding me. I did not see Francisco after that. When he took the gun, he brought it somewhere

I guess. I did not see it. They had me down there. They were just holding me down. I stayed on the ground about five or six minutes. Pio, Pablino and Cervantes were the men holding me down. While I was on the ground, I heard some shooting. "I hear one first and then several shots after that." I did not know who was shooting. I just hear it." One shot first and then several shots. Could not tell how many shots were fired, I did not count them. About five. While I was on the ground I heard some one say, "Give him another." I could not tell who it was that
179 said it. That was said after several shots. I did not hear anything else while I was on the ground. I couldn't see what was going on, I just laid down there. I got up afterwards, the shooting had stopped by that time. I stood up there three or four minutes. Cervantes said they were trying to get me again. I ran towards the other gate there. This is the gate that runs west from the school house. I was right here when Cervantes tried to get me again. He came from here. They both ran after me and I ran across to this gate here. Towards the front gate. I stopped at the gate, they caught me right there. Pablino and Cervantes caught me. Ambrosios was standing with a gun there and was trying to snap the gun at me, (indicating eight or nine feet distance). He was holding it this way (indicating). He did not pint it at me. (Witess indicates that the gun was at half cock and not pointing towards him.) That he was standing turning the gun). Then Charley Arenas came there and told him not to shoot me. He said "That is enough." Ambrosios replied in the Indian language, "No, leave me alone." Then Charley said again, "Don't shoot me, that is enough." Ambrosios gave the gun to Charley Arenas, walked in the schoolyard there, went out through the front gate and ran towards his house, that is the last house. I was at the gate there, and Mrs. Stevens came down and asked those men, "What are you going to do with John?" They don't say a word, and then Mrs. Stevens asked me: "John, what are you going to do?" "Well," I say, "I don't know; they have got me right here." Mrs. Stevens went back to the restaurant and then those fellows turned me lose. I was standing right there. I saw Stanley coming down with his shirt hanging this way. I went over there and met him.
180 I have known the other men, the nine men, sitting here since I was a boy. They are related to one and another. Pablino and Pio are brothers; and they are cousins of Agrepito Lubo and Charley Arenas; They are uncles of Cervantes and Cornelio Lubo, and they are cousins of Francisco Lubo. I don't — whether they are related to Ambrosios. Ambrosios occupation? He has got lots of cattle, he never goes out to work, he sells the stock and gets the money, that is the way he lives.

Exception No. 3.

Q. And the others, not Leonicio, but the others, how do they make their living, do you know?

The question was objected to by counsel for defendants on the

ground that it is incompetent, irrelevant and immaterial. It can not have the tendency to prove any of the issues in the case. The objection was overruled by the court, to which ruling of the court, the defendants at the time excepted.

Q. Well, those others, they got out from the reservation to work and make money, and then come back to the reservation and stay there, and that is the way they make their living. They are laborers, they work out.

Exception No. 44.

Q. How has Leonicio Lugo made his living during the past few years?

The question was objected to by counsel for defendant upon the ground that it is incompetent, irrelevant and immaterial and does *and* tend to prove any of the issues in this case. The objection was overruled by the Court to which ruling of the Court the defendants at the times excepted.

181 A. He used to be captain.

Q. Since what time?

A. Since 1909.

Q. How do you mean he made his living by being captain, did it pay any money?

A. No, every man in the reservation used to give him three dollars every year, that is the way.

Cross-examination.

By Mr. ESTUDILLO:

I belong to the Coahuilla tribe, am thirty-six years of age, have owned a revolver for two years, owned it on the first of May, 1912. I had the gun there that day, in my hands. The meeting at Juan Costa's house was on the second of May. The dance was at Juan Costa's house, the judge of the tribe. He wasn't judge at that time, he is judge now. I happened to go over to Costa's because it is my duty to go there and look after things at the fiesta.

Q. Did you ever see a fiesta on that reservation on the first day of May than this one that you have testified to?

A. I wanto to think about it.

Q. How long do you want to think about it?

Mr. ROBINSON: I object to that as improperty.

Mr. ESTUDILLO: The question is very simple, your honor. He can say so. He has been there all his life.

Mr. ROBINSON: The man is slow of speech, and he does not understand the language very well.

Mr. ESTUDILLO: Oh, he can understand when he wants to.

Mr. ROBINSON: I object to that. That is certainly not a proper comment on the witness.

182 The COURT: The witness will be given a reasonable opportunity to answer the question.

By Mr. ESTUDILLO:

Q. Did they have a fiesta before this 1st of May that you have testified to?

A. Well, I don't remember.

Q. You don't remember. Let me ask you: Didn't these Indians at Coahuilla have a fiesta on the 1st of May, in the evening, in 1911?

The COURT: That would be a year ago last May.

A. They have fiestas every year.

On the first of May. They dance and sing all night. They have a dinner and supper and breakfast in the morning and then it is all over. It is the custom of the people, the Indians, to gather from all over the country at Coahuilla on the first of May. They dance and they sing and they eat supper. They pray and say the Rosary. I heard them praying that night. The next day they decorate the graves of the dead. That has been the custom since I have been a little boy. Every year on the first of May these Indians have a fiesta in the night time. I said they were dancing a war dance. I don't know what it is, they call it the war dance. I heard them singing that night. I did not understand the words of the song they sang. They sang in the Coahuilla tongue, but I don't understand that yet. I can't understand that what they say. I am a Coahuilla, they sang in Coahuilla, but I didn't understand them. They have some other kind of language that I did not understand. They sing there for the repose of the souls of the dead. They were singing that night for their past relatives and friends.

183 I was there that night until eleven o'clock, and danced, too, with Juanito Casero. I had supper there with them. I left and went to bed about eleven o'clock. I am sure it was eleven o'clock because I got a watch and looked at it to see whether it was eleven o'clock or not. I remember that very well. I think Ignacio Costa was at the fiesta. The next morning, May 2nd, these people went over to the school house and I got there 25 minutes after they were there. I remained there until it was fifteen minutes of ten and then I got through there. Then I went after Cornelio, this old man here. Went after him twice. The first time I touched him on the shoulder. Then I went back in the school house, he pushed me back agains- the door and then I went and told Mr. Stanley that he didn't want to come. Mr. Stanley —, "You go and bring him in." When I went out the second time, I did not have the revolver in my hand. I took ahold of Cornelio by the shoulder, did not throw my arms around him, did not hear any shot right there and then. Francisco Lubo pulled my gun out of the Scabbard. Cornelio was in front of me. I jumped out from him when he tried to hit me, when he held up his hand this way to hit me, I jumped back. I never pulled my gun then. I am sure I did not shoot at Cornelios. Francisco pulled that gun out of my belt I got ahold of it too, right in the middle there and he got a hold of the end there. Neither Francisco nor Cornelio threw me over

his head on my back. They just got hold of the gun, all of them. They helped Francisco take the gun away from me. Francisco did not take it away from me alone. Pio, Cervantes, Pablin and Agrapito helped. Pio held me by one leg here and knocked me down and he told the other fellow to take me to jail. Pio Lubo said that, to take me to jail. Cornelio never said a word. Never spoke at all. Charley Arenas was not there.

Q. Well, who was the other man that took the gun away from you.

A. Francisco is the one. Francisco didn't say a word just held the gun.

Pablino, Pio and Cervantes helped to take the gun away from me. Pablino didn't say a word. Pio said "Take him to jail. Was on the ground five or six minutes. Held by Cervantes, Pio, Pablino and Agrepito. They didn't strike me, kicked me once when Agrapito was there behind me, on the head. Was trying to get up but he kick- me right here (indicating the back of his neck). Agrapito is the old man with eyeglasses one. And I was lying down when he kicked me, I was lying on my face. These fellows threw me down on the ground. I did not see Francisco's Lubo- leg then. Whether it was hurt or not. When they let me get up I stood there for a while, he told the other fellows to get me, old Cervantes there jumped over me. He ran towards me. He said, "Going to catch you." They didn't catch me, I run away from them, but I stopped at the gate there, I couldn't open the gate. When I was standing there Mrs. Stevens walked out from the rest of us and he asked those fellows what they were going to do with me and those fellows never answered any questions, never said a word. I opened the gate and went into the other yeard, the residence yard. Then I saw Mr. Stanley coming out of the East side, walking towards the residence, and then I went over to Stanley to meet him, and he told me he got shot. He told me to hitch up a governcaita team and go to Aguanga and call a doctor right away. I went down there. Several shots were fired when they had me down, about six shots, five or six. Maybe more than eight or ten. Maybe eight or nine. I couldn't tell because there was several shots and I couldn't tell how many shots there were. I feel sure there were eight or nine. Those shots were all fired while they had me down. The next time I saw my gun after I got up was over there at the gate. Ambrosio had it. I went to Aguanga, twelve miles distance from Caohuilla. I saw Mark Spence there. I talked to Mark Spence I did not tell Mark Spence on the 2nd day of May, that Celso had fired six shots. When Apapas was turning the cylinder around, he was right here next to the gate (indicating). I was about nine or ten feet from him. He came around from the north side of the school house. He came from the West. I know the directions, North, South, East and West. One door of the school house faces to the West and one to the East. The door I am talking about is the front door.

Redirect examination.

By Mr. ROBINSON:

Witness indicated on the plat which *said* of school house he means by the north *said*.

Q. That is North?

A. And that is the South that way, and this is East and West.

Mr. ESTUDILLO: I understood him to say East again.

Mr. ROBINSON: East and west. He said it both the same way.

The COURT: I understood you to say the school-house faced east.

186 Mr. ROBINSON: The door faces east.

The COURT: The only door shown on the diagram faces east.

Stipulated that the school house faces to the west, approximately, and the house is to the south of the school (people's house).

CELSO SERRANO, a witness on behalf of the government, testif-es as follows:

Direct examination.

By Mr. ROBINSON:

My name is Celso Serrano. I am a forest guard. I am an Indian of the Coahuilla tribe, born on the Coahuilla reservation. I knew William H. Stanley in his life time.

Exception No. 45.

Q. When were you appointed forest guard?

Question objected to by counsel for defendant as irrelevant, incompetent and immaterial. The objection was overruled by the court, to which ruling of the court the defendant at the time excepted.

A. The first of May, 1912.

Before that I was United States police at one time, and judge of the reservation at another. On the first of May, 1912, I went from the Soboba reservation to the Coahuilla reservation. I went with Stanley and Pederson. We drove up there at the same time. I know Antonio*n* Contreras. I saw him on my way up there, at the Wilson grade. I stopped to talk with him. After passing Contreras on the road, I saw Pablino Lubo at the Bradford ranch.

When I got there that night, I went over to Juan Costa's
187 house. The defendants were there. There were others there besides them. They had a kind of a fiesta. I saw John Largo there, did not see him speak to Cornelio Lubo. I saw John. I stayed there until ten o'clock that night. They were dancing the war dances. No other dances. I went hom- at ten o'clock. The next morning I went over to the school. The place where the dance was is about three hundred yards from the school-

house. I went right straight to the school house first that morning in the lane there in front of Mr. Steven's residence. I road seback. (Diagram B is shown the witness, and the place where school house is supposed to be.) I came right about here, in front of the teacher's house. When I got there I saw the Coahuilla people standing around right there in that same lane where I was. I can not name any of them that I saw there, there were a whole lot of them there. I saw Leonicio Lubo start up to the Stevens residence all by himself. He went up to the door and knocked at the door, and Mr. Steven- came out and said "Good morning," and Leonicio said "Good morning," and asked if Mr. Stanley was in there. Mr. Steven- said "Yes," and Leonicio said, "I want to see him" Mr. Stevens went back then to call Mr. Stanley and Mr. Stanley came out and said "Good morning," to Leonicio Lubo and Leonicio said, "Good morning," and shook hands with him, "Can I talk with you this morning," and Mr. Stanley said, "Sure, talk to me any time you want to." He said, "Let's go over to the school house, more room over there," Mr. Stanley said to Leonicio.

Leonicio came down off the porch and started to the school house, and the other Indians followed him over to the school house.

They all went inside the school house, and I seen Mr.
188 Stevens, Stanley and Pederson coming out of the house. I got off my horse and tied my horse to the fence post there; I went in and met them three fellows; I asked Mr. Stanley what time we were going out to see the lines and corners of the reservation; he told me just as soon as these people got through, he said; so we all went in at the front door of the school house, and he shook hands with all the Indians that were in there, and they all sat down, and the Indians got an interpreter; they elected Ignacio Costa.

Leonicio appointed Ignacio to interpret for them.

Exhibit No. 11, being a photograph showing two buildings, was offered and received in evidence, and shown to witness who said that that is the way it looks.

Witness pointed to a place on Exhibit No. 11, where the Coahuilla people were standing when Leonicio Lugo went to the front ddoor of the teacher's house. The place was marked in an irregular continuous pencil mark on the right hand side of the middle of the photograph with an X in the middle of the mark. I understand the Coahuilla and the English language. Some of the people there talked in Coahuilla. I understood what was interpreted from the Coahuilla to the English language. Leonicio Lubo said in Indian, "Well, interpreter, they sent policeman to Cornelio Lubo that Stanley wanted to see him." You tell that to Stanley. The interpreter told that to Stanley in English, and Leonicio said, "You tell Stanley that I have to know first why he want- to see him." That was interpreted to Mr. Stanley. Then Mr. Stanley said, "What is Leonicio, is he an officer or what." That was interpreted in Indian for
189 Leonicio. Leonicio speaks English. Then Leonicio said, "I am the Captain here of the Coahuilla tribe," and that was interpreted to Mr. Stanley. Mr. Stanley said, "You are nothing, you

are not an officer. In Washington they don't recognize you. The Leonicio said, "I am an officer here and nobody else. That was interpreted to Mr. Stanley. That's all that was said. Then Sanches Lubo asked Mr. Stanley if it was so that he had come up to brand the bulls. That was interpreted to Mr. Stanley through the interpreter. Mr. Stanley answered that it was so. That he came up to brand the bulls. That Sanches Lubo wanted to know if the bulls were branded who would own them, and Mr. Stanley —, "The government and the Indians, the same," that they belong to the Indians and the government. Sanches said that he had one bull in his place. That is — he was going to brand him he would have to take him away from the place. That was interpreted to Mr. Stanley. Mr. Stanley said he didn't have any authority to take them bulls away from there. Then all the Indians in there said, "If he is going to brand them bulls, he would have to take them away that day," and Mr. Stanley told them that he couldn't do that, he said, "I will find it out, I will write to Washington and find it out. If they give me authority to take the bulls away from here, I will do it." Juanito Casero said, "If Stanley was going up there to brand the calves and the colts out of the government horses, and the government bulls. Mr. Stanley told them that he didn't have anything to do with them that he could not brand them except the bulls. After Sanches talked about the bull he had on his place Leonicio asked the people
190 those that had bulls on their place to talk. Charley Arenas, Ambrosio Apapas, and Cornelio Lubo said they had bulls and they were going to bring them down to the school right there by the school and let Mr. Stanley brand them, and then they would drive them out for him from the reservation. Leonicio said, "These bulls are given us by Mr. Hall." Mr. Stanley asked Leonicio if he signed any papers when he had got the bulls. Leonicio replied, "No." "Well, these bulls don't belong to you," said Stanley. Then Pio Lubo spoke up, he said, "You people are talking too much, and going too far, you must do what you said this morning." That was said in Indian. They didn't interpret that part of it into English. Nobody said that in English. Charley Arenas, Pio Lubo Agrapito Lubo said the same thing. That was not interpreted to Mr. Stanley. Pio said, in the Indian language, "Let us drag him out by the hair." He said, "I will do it myself." Then Mr. Stanley came to me to give me my commission and he told the Indians that I had been appointed for a guard and a policeman. That was interpreted to them. Then Juan Costa said, "Now, what are we going to do about wood?" Mr. Stanley told them they had to get a permit from the office, if they wanted to chop wood to sell, they had to get a permit. Juan Costa said, "I do not want Celso here on the reservation. If he wants to make money off the government, he must get off the reservation and get a job." That was told to Mr. Stanley. We were all in the building talking together close to two hours. Then I got PAgapito Lubo said, "How did the government

know from over there to appoint Celso to be forest guard. He ought to put Pablino Lubo and Agapito as forest guard up here.

191 Q. Go ahead, anything else, did Mr. Stanley read them any rules or anything like that?

A. No, he did not.

Q. Do you understand what I said? I said did he read them any rules or anything?

A. I don't remember now. I don't remember just what he told them.

Q. Do you know what I mean by rules? Did he read anything out of a book? Did the Indians stay in there after that?

A. Then Leonicio stood up, made his way to the door, and the rest of the Indians followed him.

At the time that happened I was right in the schoolhouse sitting at a desk, about the third seat. When the Indians got up, Mr. Stanley said something. When Cornelio Lubo started to get up Mr. Stanley said, "Cornelio, wait a minute, I want to talk with you." Cornelio didn't pay any attention to him, but went out. When Cornelio went to the door nothing happened. Cornelio went out of the door and out of the building and John headed him off at the door and Cornelio pushed him to one side and went out. John came back and told Stanley that Cornelio didn't want to come. Stanley said go and bring him in, and John went after him. When I saw John next, he was on the ground and the Indians were holding him down. When I saw John Largo I was standing on the front porch of the school. John was right there (Indicating the place marked with a square and an x.) Six Indians were holding John down that I saw. I did not know just who the others were. I saw Agapito kick John right back here, (Indicating).

192 When I saw John down there and these Indians holding him I went down—when I was on the step I saw Ambrosio Apapas pull out his gun Apapas was right there at the front gate of that fence. (Witness indicates a place marked with a triangle on Diagram B near the front gate.) I saw Ambrosio's gun. It looked something like a 44 pistol. He pointed it at me. I don't know how he carries it, but I saw him point it out like this (Indicating). When I saw him with a gun, then I pulled my gun out and I hollered at him to put his gun away. I pointed it at him.

Q. I show you a revolver and ask you if you have ever seen that before?

A. Yes, sir.

It belongs to the government. It was given to me at the office of the Soboba reservation on the 30th day of April, 1912, when I was appointed forest guard. I am sure that it is my gun.

(Gun offered in evidence as United States Exhibit 12. Admitted by the court.)

Q. Did you have that gun with you on the 12th day of May?

A. Yes sir.

Q. Was it loaded or unloaded?

A. Loaded.

It is a thirty-eight special.

By Mr. ROBINSON:

Q. Now, Celso*nm*, when you pulled out your gun, and Ambrosio had his gun out, what happened or what did you do?

A. I walked right straight to him. I hollered to him
193 to put his gun away. I walked right along the path here (Celso's course is marked with a line of dots and dashes, the place where there are crosses in the line, the witness indicated that he stopped.) Francisco Lubo shot, that caused me to stop. Then I shot one down. I fired the pistol down and fired another one up in the air.

Q. And then what did you do?

A. Francisco Lubo tried to jump at me, tried to grab my gun, but I went back in the crowd and then Apapas began to shoot at me. When he began to shoot at me I went back towards the drinking fountain. I did not turn my back on him. While I — walking back there, I was shooting at him, too. I did not walk straight back there, but from side to side. I fired all the shots in my gun. Then after those three shots Stanley hollered and said, "Don't shoot, come right in the house." I had five shots in my gun that day. After Mr. Stanley called that out, there was more shooting. Ambrosio Apapas shot five times. He was shooting at me while I was shooting at him. After I had finished what I had in my gun and Mr. Stanley said that, Ambrosio came out and got Francisco's gun, the one that Francisco had. I saw him get a gun from Francisco.

Q. Where was Francisco standing at the time A*M*brosio got the gun from him?

A. He was right there. He turned to that fence and Ambrosio met him right there and got the gun, a-d that is the time he walked right out of the crowd towards me. The first shot he hit me just below my heart.

194 Q. What happened then?

A. Well, just at that time, before Ambrosio hit me, I saw Augustine Hamilton right in front of me. He was right — front of me facing me, and Ambrosio was behind Augustine Hamilton. Ambroso was about between fifteen or twenty feet away from him.

Q. After you were shot what did you do?

A. I went back towards the rear fence and jumped over that fence, and he turned around and walked right straight to the schoolhouse door.

Exception No. 46.

Q. Now, Celso, did that bullet go through your body, or did it -- between the ribs, or below or above the ribs, or did it strike a rib?

Question objected to by counsel for defendant- as incompetent, irrelevant and immaterial. The objection was overruled by the court, to which ruling of the court the defendant- at the time excepted.

A. The bullet struck my rib and went around and came back—well, it went through but it stayed inside my skin right close to my backbone.

The bullet has been taken out. Dr. Arnold took it out. I was about here when I was shot. (Place was marked on the map with a circle crossed with six lines.) I jumped over this fence right here (indicating). I went right straight east. After I got over the fence I went straight east of John Largo's house.

Exception No. 47.

Q. And did anything happen when you got up there?

195 Question objected to by counsel for defendant- as irrelevant, incompetent and immater-al and no part of the res gestæ. The objection was overruled by the court, to which ruling of the court the defendant- excepted at the time.

A. Before I get there, to the east side of John Largo's house, I turned around and I saw Ambrosio come out from the east side of that dining room, I suppose it is; he went out from that east door and then I didn't pay no attention to him; I was loading up my gun, and I was twalking, and John Largo's wife was standing right at the door of my house. She hollered at me, Ambrosio, she says, is going to shoot you dead.

What Largo's wife said was stricken out by the court.

I saw Ambrosio Apapas coming out of the door. I was loading up my gun when I saw the Largo woman. I saw Apapas pointing his gun at me. It did not go off. I moved, when he snapped his gun at me, on the other side of hill. I left those parts and didn't go back. I was brought back later in the evening, when the bullet was removed.

Exception No. 48.

By Mr. ROBINSON:

Q. Were you familiar with the Soboba reservation in the summer of 1911, along about June, July, August or September? I mean were you on the Soboba reservation along about that time, Celso, in the summer before Mr. Stanley was shot?

A. Yes, sir.

Q. And did you see Teofilo Pa's land there?

196 Question objected to by counsel for defendant- as incompetent, irrelevant and immaterial. The objection was overruled by the court, to which ruling of the court the defendant- at the time excepted.

A. Yes sir.

He had fruit trees and alfalfa on it. He had about two acres.

Cross-examination.

By Mr. ESTUDILLO:

The Bradford ranch is about four miles this side of Coahuilla. I saw Pablino Lubo the first of May about one o'clock there. He

was grubbing brush. I didn't see anybody else at the Bradford ranch. I cannot tell you what a war dance is. This dance that I call a war dance is the same kind of a dance those people have every year on the first of May, and it is the custom of the people there. I went to the school building the second of May. I had my gun on the first and on the second of May. When I was an officer I carried a pistol. Did not carry one when I was not an officer. I went over to the school house on the 2nd of May at eight o'clock in the morning. John Largo was not at the school house. The Coahuilla Indians were there and Mr. Stanley was not there yet. I saw twenty-six Indians. Mr. Stanley shook hands with all the Indians. I had been in the schoolhouse close to an hour before John Largo arrived there. Until John Largo arrived I wasn't doing anything, I just sat in the school building inside. The Coahuilla people were there, too. We talked to each other. Captain Lugo did not say to the interpreter anything to say to Mr. Stanley in regard to the bulls.

197 Only what he said to the people, the ones that had bulls. They had to say what they were going to do with their bulls. To let Stanley brand them or not. Captain Lugo did not say anything about the branding of the bulls. Just that one part, whether they were going to let him brand them or not, those who had bulls. He said that in a low voice. Santos Lubo said he had one bull on his place and told Mr. Stanley if he was going to brand the bulls, he was going to take him away from the place, because he didn't want him to be branded. Santos Lubo did not say to the interpreter to tell Mr. Stanley that his cattle were wild and would get scared if they put that bull in there.

Q. And didn't he say to the interpreter to tell Mr. Stanley that he would bring the bull so that they could brand him?

A. Yes sir.

Q. Did he say that?

A. Yes sir.

Pio Lulo said, "Let's drag him out by the hair," to those other three men, Charley Arenas, Agrepito and Pablino.

Q. Did he address them that way, "Charley Arenas, Agrepito and Pablino," did he say that?

A. Yes sir.

Q. He says, "Agapito, Charley Arenas, and Pablino, let us drag him out by the hair"?

—. Yes sir.

Q. "Let us drag him out by the hair?"

A. Yes sir.

Q. You are sure about that Celso?

198 A. Yes sir.

(Witness indicates on the diagram in what part of the building, Charley Arenas, Agapito and Pablino were.)

Agapito was on the first desk, second row on the north side; Pio was on the third desk, second row, on the north side of the building; Agapito was in the third desk, first row, north side of the building. Whenever United States Agent or Teacher, or any other man

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connected with the government came to the reservation, the Indians always came out to hear him. Not always when a white man goes up and stops, but when the agent comes they all go. *They* has been the habit and custom of the people. It was Juan Costa that said he didn't want me as forest guard. The other Indians said the same thing. When he said that I was sitting in the third seat, right hand side of diagram A. I remained in the building close to two hours. Talking about the things that the people were interested in. Then Cornelio walked out, pushed John Largo to one side. John Largo was right at the door of the schoolhouse when Cornelio pushed him to one side. (Witness points to inner door on diagram A.) When Cornelio went out of the building after pushing John Largo aside, I went out. Well, I stayed there until John Largo got back into the building. Mr. Stanley said to John, "Bring Cornelio in." John Largo went out again, then I went out of the building. I was on the walk in front of the building when I heard the first shot fired. Did not hear any shots before I went out of the building. I saw Francisco Lubo when I first went out of th- building. I did not have my gun in my hand. Before I went out, Mr. Stanley said
199 to me, "Go and help John." After drawing my gun, I fired two times. Francisco Lubo was in front of me. He was not straight in front of me, he was kind — off one side of me. He was facing me. About ten feet away. I did not see Francisco Lubo drop. Nor his wounded leg. I was not excited or scared, or frightened at all, nor nervous at all. I fired three shots at Apapas. I fired one down in front of the — right down to the ground, where Francisco Lubo was, and I fired another one up in the air. I fired one in the direction of Francisco Lubo. I did not point the gun at Francisco Lubo. I fired one where Francisco Lubo was, right in front of him, at his feet.

Q. But you know you fired at his feet where he was?

A. Yes sir.

Q. And that is Francisco Lubo, this man here?

A. That is the man.

Q. Where was Apapas them, when you fired that shot in the air and one at F-ancisco' Lubo's feet?

A. Right there close to the fence gate. That is about fifty-five or sixty feet from the corner or edge of the porch. Francisco fired at me first. Apapas fired at me first. I had my gun out when Apapas fired. I am a pretty good shot. Apapas was pointing his gun at me when I got near the front gate. I walked right up to him. I didn't go any further than right there where Francisco shot at me. Then I fired at Apapas three times. I did not reload my gun then. Apapas kept shooting at me. He shot at me five times. And I seen him get Francisco's gun and he walked right out at me. That was the time he hit me, the first shot, was from Francisco's gun.

200 Q. If I understand you, you fired at Apapas three times and he fired at your five times.

A. Yes, sir. Then when he hit me I went back right straight east to that rear fence. When he hit me I was standing right near to the

drinking fountain. Apapas was west of me. I had my revolver in my hand. It was not loaded. I do not remember how many shots were fired there that morning.

Q. When did Apapas get the revolver from Francisco?

A. It got it when he fired them five shots at me with his own gun. He fired one shot at me and hit me that time. I saw Augustine Hamilton there near the fountain. I couldn't tell you what he was doing, he was right in front of me jumping around like that (indicating). He didn't say, "Don't shoot," to me. I am friend of the Captain Lugo but since this trouble he is not friendly to me any more and I am not friendly to him. I am not an enemy of his. He made me pay a fine.

Redirect examination.

By Mr. ROBINSON:

I did not aim my gun at Francisco Lubo's feet.

By Mr. ROBINSON:

Q. You said something about it was the custom of the Indians to go over and see the superintendent or teacher whenever he came to the reservation. It was the custom, was it, that the Coahuilla go over and meet the superintendent or teacher whenever he came to the reservation?

A. Whenever the superintendent wanted them to come,
201 why they came. Stanley went over there to meet these people before. I was there.

Q. Did the Indians go over to the school house?

A. Yes sir, when he wanted them to, they all came. They talked to Stanley at that time. That was close to two years ago. Leonicio was there. This meeting was just when he got his position and went up there.

Exception No. 49.

Q. Then what happened at that meeting, what did they talk about?

Counsel for the defendants objected to the question on the grounds that it is incompetent, irrelevant and immaterial, as it happened at a date previous to the trouble, and it has no tendency to prove any of the issues in the case. The objection was overruled by the court, to which ruling of the court the defendant at the time excepted.

A. Why, they told him that they did not want him up there. Leonicio and all said that. And they said they had written a letter to Washington and they were going to wait for that answer and then they would obey what Stanley ordered.

Q. Did they stay there and talk any more?

A. Yes, they stayed a little while and Stanley told them that he was going to do the work up there and if there was anything they wanted him to do, he was going ahead with it.

Q. Was that all?
202 A. That was all.
Q. Did they say anything to that?
A. That's all that I heard.

FRANCISCO (CHICO) LUGO, a witness produced on behalf of the government, testified as follows:

Direct examination.

By Mr. ROBINGSON (Ralph Dominguez acting as interpreter):

My name is Francisco Lugo. I am an Indian of the Coahuilla tribe, live in Coahuilla, have lived there fifty-two years. I know Leonicio Lugo, have known him during the past five years.

Exception No. 50.

Q. What position did he hold on the reservation at Coahuilla, if any?

The question was objected to by counsel for defendants as incompetent, irrelevant and immaterial and on the further ground that the position of Leonicio Lugo held upon the reservation has nothing to do with the issues of the case. The objection was overruled by the Court to which ruling the counsel for the defendants excepted — *that* time.

A. He was captain. He became captain four years ago. He has lived on the reservation ever since that time. He was working at Redlands for the past fifteen years. He worked at Redlands before he became Captain. Since he became Captain he
203 worked at Coahuilla.

Exception No. 51.

Q. And have you seen him there all the time, every day?
A. Sometimes.
Q. How much of the time?

The question was objected to by counsel for defendants on the ground that it is incompetent, irrelevant and immaterial and that it does not prove any of the issues in this case. The objection was overruled by the court, to which ruling of the court, the counsel for the defendants at the time excepted.

A. He would go around to fiestas and working outside sometimes. Would be out two or three months at a time, out.

Exception No. 52.

Q. When he was on the reservation, what was his occupation?

Counsel for the defendants objected to the question on the same grounds that they had interposed to the previous question. The objection was overruled by the court, to which ruling of the court the defendants at the time excepted.

By Mr. ROBINSON:

Q. Since he was appointed captain about four years ago, has he worked at anything else on the reservation at Coahuilla?

Exception No. 53.

Counsel for the defendants objected to the question on the grounds that it is incompetent, irrelevant and immaterial. The objection was overrul- by the court, to which ruling the defendants excepted *to* at the time.

204 A. He would gather up money to go to Washington.

Upon motion of counsel for defendants the answer was stricken out as not responsive to the question.

By Mr. ROBINSON:

Q. What I want you to answer is: Did Leonicio Lubo, during the past four year-, follow any other occupation or do any other work except being captain?

A. He would do other work at the fiesta that is all, around the fiesta.

Cross-examination.

By Mr. ESTUDILLO:

I go by the name of Chico. I am known as Chico Lubo I have been convicted of a felony from Riverside.

Redirect examination.

By Mr. ROBINSON:

That felony was being drunk. That's what I understand being a felony.

Q. That's the only thing you have ever been arrested for, isn't it Lubo?

A. Yes, sir.

Q. How many times were you arrested at Riverside?

A. One.

Recross.

By Mr. ESTUDILLO:

Q. Let me refresh your memory, Chico. Do you know San Quentin prison?

A. Yes, sir.

Q. Were you ever sent there from San Bernardino and
205 served one year in San Quentin Prison in this State?

A. At that time.

Q. You have served then in the State Prison at San Quentin haven't you?

A. Yes, sir.

Q. And you were sent up from San Bernardino County and not Riverside, weren't you? That's true, isn't it?

A. That is true.

Redirect.

By Mr. ROBINSON:

I was sent up for assault, for cutting, stabbing.

CLARENCE E. CHAMBERS, a witness on behalf of the government, testi-ed as follows:

My name is Clarence E. Chambers. I live near Hemet in Riverside County. Have lived there about twenty-five years. I am a rancher and fruit grower. I know the defendant Patrick Casero. I have known him about seven years. I knew him in 1911. I knew William H. Stanley. He came to San Jacinto as the Indian Agent, I believe. I knew him when he was at San Jacinto on the Soboba reservation. Patrick Casero worked for me in the summer 1911 on my ranch near Hemet, about four and one-half miles. I know about the times Stanley was appointed Superintendent of the Coahuilla reservation. I told Pat that he had been appointed superintendent of all the little reservations around, Coahuilla included. That is, William H. Stanley had. There was some other conversation taking place at the same time. He told me at that
206 time that the Coahuilla Indians did not want him there as their Superintendent. They didn't want anybody there. I don't remember just what all there was said. He said as near as I can repeat it, that the Coahuilla Indians would not recognize him as a government agent, and they would get rid of him just as soon as they had the previous agent. I talked with him several times about that.

Q. How long after that was it that he left your place?

A. Why, he left my place some time after that—about the time that these Indians came back that went to work for Senator Estudillo.

Q. Did you have a conversation with him then?

A. At the time he left, he said that he had to go—I wanted him to stay and he said he would have to go that they were expecting a letter from Washington. That Senator Estudillo had told him that there would be a letter to the Coahuillas and all the Coahuilla Indians went up at that time and I could not prevail upon him to stay. He left my place at that time.

Cross-examination.

By Mr. JOHNSTONE:

I couldn't say how long Patrick Caser was in my employ exactly. He worked for me during the summer time. I think he worked for me, on and off, for four years. He worked through the summer time. Sometimes he would work two or three months—I think the first time he worked for me he worked four months straight.

Q. How long had he been in your employ prior to the time you allege these conversations took place, that is continuously.

207 A. That was the last time Patrick Casero worked for me.

Q. I asked you how long prior to these alleged conversa-

tions was he in your employ, one month, one day, two months, three months, or four months?

A. Well, I don't just remember.

Q. Do you remember when he came in your employ in 1911?

A. No, I can't say that I do. He worked for me about three to four months each year. I don't remember the date he left me. I think he left me in August, to go to Coahuilla to get this letter. All the Coahuilla Indians went up there at this time. Pat and I have always been friends. I haven't anything else but a friendly feeling for him. He left my place about the time Senator Estudillo came back from Washington, I believe. I don't know when that was. I needed him very badly at that time and urged him to stay. I wanted Pat because Pat understood all the work around the ranch and he was the best man I ever had there. Consequently I wanted to keep him.

Q. He refused to stay with you, didn't he?

A. He said they all had to go to Coahuilla and he said he had to go. He said the captain sent word for all of them to come. He expected a letter from Senator Estudillo and they all had to be there.

Q. You were angry at this going there, were you not?

A. No, I was not. Whenever he got ready to leave he always went. Whenever he wanted to go to a fiesta, he went. I never got angry at those fellows because I knew whenever they wanted to go to a fiesta, they generally wanted to go and generally did go. There was no use in getting angry about it.

208 I don't remember that on or about the 24th of July, 1911, I met Patrick Casero near my place and asked him to come back under my employment that I needed him and didn't want to get another man. I asked him every time I saw him to come back. I never said I would get even with him. And did not swear at him. Patrick Casero and I have never had a word.

Q. What was the occasion of Casero making this statement to you that Coahuilla didn't want Stanley?

A. Well, Pat and I always talked over their affairs. I was friendly with every Indian on both reservations, and I don't think I had an enemy among any of them, and I always talked to them and they talked to me and told me everything that was going on.

Q. You are kind of confident of the tribe?

A. I don't know that I was any more than anybody else.

Mr. ESTUDILLO: That is all.

ADOLF LUGO, a witness on behalf of the government, testified as follows:

Direct examination.

By Mr. ROBERTSON:

I speak a little English, my name is Adols Lugo. I live on the Coahuilla reservation and — an Indian of the Coahuilla tribe. I lived there in 1912 and knew William H. Stanley. I remember the first time Mr. Stanley came to the Reservation after he was made superin-

tendent. I went to the meeting. Leonicio Lugo was there. These other men sitting here were at that meeting. He came and told them there he was the Indian agent in Soboba in Santa Rosa and Santa Inez, or something like that. I heard what Leonicio Lugo
209 said to him. He said they would have to wait until he got a letter from Washington and then he would talk to him.

Q. And did they stop to talk to him.

A. Yes.

Q. What did they do then?

A. Well, they did not want to talk with him and Stanley was going to report that to Washington what they said and Leonicio said he could report it himself. They did not stay there and talk they went out. I was at Coahuilla on the first of May when Mr. Stanley came up in the afternoon. I was at the Fiesta at Juan Costa's house.

Exception No. 54.

Q. And did you hear John Largo have a talk with Cornelio Lugo?

A. Yes sir.

Q. What did John Largo say to Cornelio?

The question was objected — by counsel for defendants on the ground that it is incompetent, irrelevant and hearsay. The objection was overruled by the Court to which ruling *of* the counsels of defendant- excepted *to* at that time.

A. Well, he said to Cornelio that Stanley wanted him that morning, Tuesday morning, I mean another day, the next day. Cornelio said, all right and he said they want me too. That is John Largo said I want you too. I went over there the next morning between 9 and 10. They were having a meeting there already. These men, Leonicio Lugo and Apapas and Patrick Casero and the Lubos, all these men sitting here, were there. I went in the schoolroom, and they were talking with Mr. Stanley, through Ignacio Costa as interpreter. I understood what the interpreter was saying. I understood English too. They were talking about those bull-.
210 Mr. Stanley said he was going to brand those bulls, with the government brand, so if anything happened and they lost those bulls there was so many cattle there, white Men's and Indian's, they might just as well brand them so they could tell them. Leonicio asked what are you going to do with the calves. Mr. Stanley said the calves are going to belong to you fellows and you can brand with your own *b*brand.

Q. Then what was said?

A. Well, Sanchez Lugo got up and said that if they branded the bull in his pasture he would take him out right quick and put him in Mr. Stanley's. Leonic-o said, Sanchez has talked already, what are you fellows going to say, that *h*have *n' any* bulls and they that had bulls said the same as Sanchez.

Q. Then what did Stanley say?

A. Well, Ignacio interpreted for that, and Mr. Stanley told the- he was going to ask authority from the government, what to do

wwith the bulls, that if the government told him to change the bulls he would do it, if they don't they will have to stay right there.

Q. Did you hear Pio Lubo say anything?

A. I heard Pio Lubo say something about they were going to pull him out by his hair, and——

Q. How is that?

A. They were going to pull him out by his hair.

Q. Pull who out by his hair?

A. Mr. Stanley.

Q. Did he say tthat in English or in Indian.

A. Indian.

Q. Did anybody *sayl* Mr. Stanley what was said there?

A. No sir.

Q. And what happened after that?

211 A. And then they did not want it and Leonic-o said, let us go out and they got up and they all got out. Mr. Stanley hollered to Cornelio, but he never stopped, so he sent the policeman John Largo to bring him back. Cornelio pushed John Largo over there to the door. John Largo came back to Mr. Stanley and told him about — and Mr. Stanley said "Go on after him". Mr. Stevens said "they are fighting there on the outside. And then me and Mr. Stanley walked to the door and then there was fighting there When I got to the porch I saw Ambrosio had a gun in his hand Standing right here somewhere. I saw Patrick Casero out there When I saw Ambrosio, he had the gun and walked right here to Celso Serano and at that time Celso pulled his gun and shoot down and up and Ambrosio went to him and shoot at Celso and Celso shot at Ambrosio and they were shooting right there. Ambrosio was shooting that way and Celso was shooting this way (Indicating) Celso was standing right here behind this fountain here. (Place pointed to by the witness, was marked with a square with one line across it.) Ambrosio was standing right there somewhere. (Place mark- with the circle with one line across it.) Mr. Stanley and I were on the porch together. John Largo was here 25 or 30 feet from the porch on the path. They had him down, and this Agapito was kicking him or something I know Agapito pretty well. I am sure I saw him there with John. I saw Celso when he was shot. He backed up and went over to the other side of the fence. Ambrosio turned back and came around to us and shot Stanley.

Q. Suppose that you are on the porch now, how did Ambrosio come, did he come around in front of you or the side, or how?

A. Just went right straight to us.

Q. Right straight in the front.

A. Yes. I was standing there and I jumped this way and

212 Juanito jumped out of the way too. Stanley raised his hand and hollered to Ambrosio not to shoot, he did not want him to shoot and raised his hands both ways and turned around that way and he shot him rright there. I saw Ambrosio shoot. Stanley was turning around like that when the gun was fired off. I did not see the bullet go in his body. I saw Stanley turn like that and turn that way. And then he went into the school. I saw that he was being shot then. Apapas followed Stanley in the school inside.

Stevens and Peterson ran over there to the school. Ambrosio went into the schoolroom and shot again, across the schoolroom. When Ambrosio run through, I was standing outside in the hall, a little hall back here.

Q. Just show us how you stood?

A. I was standing like that and turned like that. (Indicating.)

Q. And Apapas close to you?

A. No, he went in and came back again.

Q. He went in where?

A. Went into the little hall that is fixed for your hat or something.

Q. You mean the little hall where the children's hats are hung on pegs?

A. Yes. I was standing in this hall when Apapas went into the schoolroom. When he fired the shot at Stevens and Pederson I was standing right there where the door was open. When Ambrosio Apapas went through while I was standing in the hall way there. Ignacio Costa was there, Juanito Casero also. Juanito was over there at the little hall and was trying to stoop with his head in the corner. I remember some photographs were taken there during a visit of Mr. Robinson to *Cao*huilla a few weeks ago. I remember a
213 photograph being—from inside the schoolroom between the desks, pointing out of the door.

Exception No. 55.

Q. I will ask you to look at this photograph that I now show you and ask you if this — a good photograph of the way things look as you are looking out of the door from in the schoolroom.

The question was objected to by counsels for the defendant on the ground that it is incompetent, *the* irrelevant and immaterial, the proper foundation has not been laid. The photograph was taken a good many weeks, practically a year after the affair happened. The objection was overruled by the court, to which ruling of the court the defendants at the time excepted.

Mr. ROBINSON: We can cure that in a minute.

Q. Adolph looking out there, does not that look any different—is there any difference in the way that looks the day you were up there or when Stanley was shot?

Counsel for the defendant objected against *chathehgrounds* that the question called for an opinion or conclusion of the witness.

By the COURT: Is there any change in the building or the place since the shooting.

A. No sir, I do not see any difference. That is the way it looked, looking out of the door. That is the way it looked, looking through the little hall way out of the door. I was looking through this door into the schoolroom. (Photograph offered as United States Exhibit No. 13.)

Q. Now Adolph, after Ambrosio went through the front door and fired the shot*t* inside, did he came back.

A. No, he went around that way, north.

Q. Right through the building?

A. Yes sir, and shot Celso again when he was over there to fix his gun and the gun won't go off. I saw that, I was standing
214 then outside, by that little gate there, on the west side straight from the school, a little gate in the fence, in the same yard there. (Witness indicates a place on the map where he was standing.)

Q. Down toward the front fence?

A. Yes. He came back here and run over there after the gun, and when he gets his gun again he shoot 4 or 5 times and it won't go off, and then at that time Charley Arenas catched him from behind and he told him it was enough. Cought Ambrosio.

Cross-examination.

By M. ESTUDILLO:

Q. Did Apapas start from this place? (Counsel points to the square with an X within the square and asks this question.) Did Apapas start from this point towards this other point?

A. No, he shoot Celso first and then he gets the gun and comes across this and he sees John and he run from here.

Q. Where did Ambrosio start from and run toward this place to which I am pointing now?

A. He started and went and shoot at Celso at the south side and he shoot at Celso again and the gun won't go off. And then he stopped right there and go on the south side of the house and then he has to go right there.

Q. When Ambrosio was at this point, (semicircle with a triangle over it, Diagram "B" below a dotted line, near the letter in *Quaoa*tion did he shoot at John while — was there.

A. He was right here somewhere.

Q. How many times did he shoot at John Largo?

A. *D* don't know how many time- it was coming very quick all the time. I am sure that it was Ambrosio. I am sure that it was John Largo.

Q. And that is at this place here where you marked the
215 semicir-e with a triangle over, diagram "B" below a dotted line and near the letter "A?"

A. Yes.

Q. How many times did he snap the gun?

A. I don't know, how many times, but his gun snapped lots of times. Cervantes started from this corner right here. (Witness puts his finger on the triangle on the sidewalk, at the lower end of diagram "B" and almost in front of the front of the school building.) Cervantes run right to here. (Witness carries the point along the line from the place last described to the circle with a triangle over it, below the dotted line and near the letter "A".)

Cervantes said he was going to put John in jail. Apapas and John Arenes and Cervantes were there. Charley Arenas took the pistol from Apapa's hands and said that was enough. When Arenes took the pistol from Apapa's hand it was not firing.

Q. You could see Apapas going out of the door of the dining

rok room on the east side of the bu*ak*lding, while you were standing over here near the fence, is that right?

A. Excuse me, I mean this is the way. I coulc see him way back the other way, but this door is the one, he went out. And when I was coming out this *die,* I could see Ambrosio come out. (Witness indicates the door from the schoolroom from the kitchen as the one through which he saw Apapas go). I saw him over there, he went inside of this door and I did not see him *on* come out of this door here. But I saw him come out of this door at the east end of the school building. I went to the school building between 10 and 11 o'clock something like that in the m*r*oning, I could not say exactly now what time it was. Mr. Stanley wanted me to go over there and I was late. I was over in the meeting all night you see.

216 I thought I would have plenty of time to sleep, but I did not. It was pretty near morning and I slept a little. I was asked to come over to the meeting. Mr. Stanley wanted me, he sent a policeman for me I heard John Largo speak at the meeting. Largo told Cornelio that Mr. Stanley wanted him in the morning, and John told me that Stanley wanted me too. That was said about 9 o'clock something like that. That's all John Largo said to Cornelio. Apapas was in the school building, when I got there. (Witness identifies the third seat on the second row, as the place where Apapas was sitting, when he was in the building.) I do not know what time I got there. I did not have any time piece with me. Am not sure whether it was 9 o'clock 10 or 11. It was in the morning anyway. The Capt-in Leonicio Lugo was talking. Sanchez talked too. All of them talked. They were all at the meeting there. (By all of them I mean all the Indians that were there that morning.) I don't know how many of them were there, I couldn't tell, there was 20 or 25. They all talked to Mr. Stanley. I can't remember all they said, but I remember some. I remember what Leonicio Lugo said, also Sanchez. I remember what Pio said, but do not remember what any other Indians *s*aid. I just remember what Sanchez, Leonicio, and Pio said. Charley Arenas talked a little bit too, I heard that. He said, you had better tell what you had been telling over there this morning. I remember that very well. He said that in Coahuillan, to Ignacio to interpret, but he did not interpret it to Mr. Stanley at all. Charley Arenas said he is not going to arrest you, but he is going to arrest all of u*t*. Stanley was going to arrest all of us.

Q. Did he say Stanley?

A. No, Charley Arenas tell that to Ignacio.

Q. But did he use the name Stanley?

217 A. No. He did not say that. But he said that one. He did not say Stanley, he did not say that.

Q. He did not use that name at all?

A. No. Leonicio Lugo said, what did you fellow- say about the bulls when they have them? He was talking in Indian very loud. He did not holler. He was not angry at all.

Q. And didn't Sanchez say to Mr. Stanley, that he would take the bull so that he Stanley could brand him, take him out of the pasture?

A. Yes.

Q. He said that?

A. Yes, I did not — Sanchez Lugo say my cattle are wild.

Q. Well, you heard him say, I will take the bull out so that you can brand him.

A. No, he said, if he is going to brond the bull, he will have to take him out. I don't want the bull around with somebody's *r* brand on it. That is what he said.

Q. Now, who went out that building first?

A. Well, Leonicio got up and said, let us go out and they went out. And he hollered to Cornelio and he never paid any attention to him and he went out and he said to the polic-man bring him ba*ke* and he went over there to tell him to come back and he pushed him back. Mr. Stanley was talking to them yet when they got up and left. Mr. Stanley was talking about sending to the government for authority to remove the bulls or not. Stanley did not say to wait because they had done that many times. When they did not want to talk they just jumped up and walked out all together.

Q. When the meeting was over they walked out?

A. Yes, they do that three time- I think or four times. I did not see anything between John and Cornelio. I went out of the
218 building with Mr. Stan*e*ly to the front porch when Mr. Stevens went out there and said they were fighting. I was ahead of Mr. Stanley a little bit, but we were standing right even there when we were both on the porch. The first thing I saw when Mr. Stanley and I walked out of the school building was Ambrosio with his gun in his hand, Celso was over there at that corner.

Q. Was Celso shooting?

A. Well, Celso shoot down and up, right straight to Francisco Lubo.

Q. Well, let me ask you whether Celso shot at Francisco Lubo there?

A. Uh-huh.

Q. Or in his direction? Did Celso hold his pistol like that and shoot at him?

A. We-, he pulled his gun and shoot like that and shoot again at the top.

Q. Celso did that?

A. Yes.

Q. And was Francisco standing in front of Celso?

A. About like that, the way you are standing.

Q. And Celso pointed his gun at Francisco? I am Francisco now.

A. Yes.

Q. And fired at him?

A. Yes.

Q. And the first time Stanley hollered to Celso not to shoot?

A. Yes.

COPY BOUND

Q. Mr. Stanley hollered to whom? To Celso.
A. To Celso.
Q. Well, after shooting at Francisco, did Celso shoot at Ambrosio Apapas?
219 A. No, Ambrosio shoot to Celso first.
Q. How many times?
A. He shoot about twice, I think. I don't remember very much ut I seen them shooting both of them.
Q. Now, was Celso shooting at Apapas and Apapas shooti-g at elso when you and Mr. Stanley appeared at the porch?
A. Yes, Mr. Stevens was there, Yes, Mr. Stevens was there. While Mr. Stanley and I were standing on the porch, I don't know ow many shots were fired, there were lots of them. I am friendly o Leonicio Lugo, he is my uncle. I never have trouble with Leonicio Lugo, but his nephew had trouble with me once. He is my riend, he is my uncle I never had trouble with him at all.

Redirect examination.

By Mr. ROBINSON:

Q. Now, when you said that Celso was shooting at Francisco, did you say whethere Francisco had a gun or not?
A. No I did not see him.
Q. When he shot up in the air did he point at Francisco or over his head?
A. Over his head like that.
Q. When he pointed it the other way did he point it at Francisco?
A. At Francisco, yes.
Q. Which part of it?
A. Right in front of him.
Q. What part of Francisco's body did he aim at, did he hit him?
A. Yes, he hit him right here. (Indicating on the leg.)
Q. And he aimed that way?
A. Yes. When I got out of the school house, I noticed where Leonicio went to. He was standing outside the fence.

220 RICHARD CARL STEVENS, a witness on behalf of the government, testified as follows:

Direct examination.

By Mr. ROBINSON:

Q. My name is Richard Carl Stevens. At the present time I am working at Cantonments, Okla. I am in the government service. Principal of the Indian School at Cantonments. In May 1912, I was teachin- at the Coahuilla Indian school. I knew William H. Stanley in his life time. I was not at Coahuilla at the time when Mr. Stanley was made Superintendent at Coahuilla. We got up there the last few days of July, the 29, 30 or 31st of July. I worked for him up to that time. I forget just the date. That would be two years in the coming September, not quite two years. I worked for — at Santa Rosa and Santa Inez, Santa Barbara County. I was

teacher at the Indian School. He was Superintendent there then in conjunction with Soboba. I lived at what is know- there as the Teachers house up at Coahuilla. I was there when Stanley called a meeting sometime before school took up in September. I was there when the Indians came in. Leonicio Lugo the Captain was there and talked with Mr. Stanley. The other Indians were present Leonicio was the chief spokesman. I heard what Stanley told him at that time. He told him the purpose of his calling a meeting up there, right at the first of the talk. That he came up there to get things in shape. And to work with him, to get the Coahuilla reservation in good standing. And to try to do good work up there. And asked them to get ready to elect their officers. Leonicio told Mr. Stanley that he could not work with him, that he would have to wait *that he would have to wait* until he got a letter from Washington before he could do anything. They talked a good bit there,
221 I don't remember just how long they talked there in the school room. Finally they left with that feeling or that understanding that they would — until they got a letter from Washington. Mr. Stanley told me that he would wait on them. I saw Mr. Stanley up there on more than one occasion. He was up there several times. I saw him talking with the Indians about their affairs of the reservation if any of them came to talk to him, he talked with them up there. I have heard Stanley talk with them about their affairs.

Exception No. 56.

Q. And what was his habitual attitude as to his temper, as to whether it was irascible and violent or quiet and courteous.

A. He was always courteous, I thing*k*.

The question was objected to by counsel of the defendant — *is* ground that it is incompet*ten*-, irrelevant and immate-ial, that a man's general temper is a matter of reputation and not the opinion of any one person. The objection was overr- by the Court to which ruling of the court counsel for the defendant excepted at the time.

A. I would call it a fatherly feeling he always seemed to have for the people. He always seemed to be very courteous to them. I never knew of any occasion when he was discourteous to an Indian.

Q. Was his manner and attitute*d* severe or pleasant?

A. He was always pleasant.

Q. Did you ever hear him quarrel with an Indian?

A. I never did.

Q. Was he there on the first of May, 1912, when Mr. Stanley *on* came up there?

A. Yes sir. On the 9th of May Mr. Stanley stayed at our house I saw what clothing he had on. He undressed there in the
222 room. He used to take off his coat and step into the bedroom there a double door into his bedroom. He had no firearms. Leonicio came to my door the next morning. Something like 8 o'clock, I don't just know exactly. There were a good many Indians there. He know*c*ked at the door. I went to the door and he asked

me for Mr. Stanley. I turned around and called Mr. Stanely to the door and told him that Leonicio wanted to see him. Mr. Stanley came. I heard the conversation between Mr. Stanley qnd Leonicio Lugo. Leonicio said, he came over to talk to him and that his people came. And I spoke to Mr. Stanley and told him they had better go to the schoolroom if they were having a meeting, that there was not room in the office, in the building. And he told him alright to tell them to come to the school room and he would go over. Then they went to the schoolroom. When I got there the Indians came in about that time, some of them were out in the yard. We went into the school room and there was a few of them there, and they kept coming in. They practically all got there about the same time. I know all these defendants here. I was well acquainted with all of them. They were all there at the reservation when I was, excepting Pio, he was not up there so very much. I saw them all there that morning. The Indians talked to Mr. Stanley through an interpreter in the Indian language. I have talked with Leonicio Lugo, he speaks very good English, never had any difficulty in making him understand what I said. In talking with Mr. Stanley he did not speak in the Enblish language, he spoke through an interpreter most of the time. At the other meetings he spoke through an interpreter not in the English language. Ignacio Cost- was the interpreter on the 2nd of May, 1912. Leonicio Lugo stayed in the front of the room. Juanita Casero sat right close to him on the side. He was not sitting just behind him. Juan Costa was
223 just behind him, it seems to me he was next seat to Leonicio.

I know Apapas pretty well he was there. I know his land where his house and most of the land that he uses there. He has a good deal of land on the reservation. His occupation is stock raising. I don't *jow* that I can tell the convers-tion between Stanley and the Indians Just in the way it came, I can give a general idea. When they first came in the- seemed to call a meeting and Mr. Stanley took his seat there and helped them, and asked them what they wanted to say. They chose their interpreter Ig*an*cio and he took his chair up by Mr. Stanley and Leonicio said he had come over there only for the one thing to see what Mr. Stanley wanted with Cornelio. He did not want to talk*e* to him only about Cornelio, he wanted to know what Mr. Stanley wanted with Cornelio Lugo and I don't know as I can answer just how Mr. Stanley answered him, but he told him he could take care of Cornelio himself. He could talk to him when he had time, when he cou-d see him.

Q. That is, that Mr. Stanley could?

A. Yes, that he could himself, that he didn't want anybody to talk for him. And Leonicio went on to say that he was the leader of the people, the captain there, and if anybody wanted any business with his people they would have it through him, and there were several subjects brought up there, and a great*ma* many things concerning the reservation. They seemed to leave tha- subject of the first talk and were talking about some bulls that were there. Mr. Stanley had sent up word a few days before that he would be up to brand some bulls that were on the reservation, and a policeman

had gone around to hunt up these bulls, and of course he told the people what he was going to do with them, and some one inquired in the meeting about the bulls, and Mr. Stanley told them he had instructions to brand the government bulls on the place.
224 They said that Supervisor Hall had given them the bulls, and that if Mr. Stanley was going to put the government brand on them he would have to take them off the reservation. Mr. Stanley told them he didn't have authority to take them off the reservation at that time, that he was just ordered to brand them, and he said that he would write to Washington if they didn't want the bulls and would ask permission to move them off the reservation, or something to that effect, and they talked about several little things there. I did not notice the action of Pio Lugo or Sanchez, they would talk amo*gn*st themselves once in a while, I don't remember just which ones. Agapito seemed to talk quite a good deal. Some of them seemed to hush him. It was not interpreted. Some in the meeting would try to get him to understand that they did not want him to talk so much and laugh at him and say "sh-sh" once in a while at him. What he said was not followed by any interpretation as I remember. There might be several I might recall if I had time. But on the spur of the moment I cannot. I understand Mr. Stanley just before the meeting closed spoke about having an appointment. He did not announce that the meeti*n*g was closed. He spoke to them and said that Selso had been appointed for his guide. There were po-ice duties without pay. That he would act only as policeman with orders from this office. That he could not arrest any one without an order from this office. I think he went back to Selso and got this paper from them to read to them. The commission for Selso's position. And when he began to read and had the interpreter interpret it they began to leave the building. Several of them stood up and began to leave. I saw Cornelio Lugo there when Selso's appointment was spoke- of*f* he got up and left with some of them. Mr. Stanley spoke to him and asked him
225 to wait, he wanted to see *he* went out towards the door and Mr. Stanley told John the policeman that he wanted to see him. John went down to the door to get him and he brushed John back and John came ba*k*e and told Mr. Stanley that he would not come, then Mr. Stanley told him to bring him and John went after him. Cornelio was out by that time, the next thing that directed my attention was the shooting outside, I think. Noise and confusion out there. I kin*g* of followed down there to look out of the door. The first thing I saw was this scramble with John. Several of them mixed up in a fight. John was in the midst of the clamour, most of the time on the ground. (United States Exhibit No. 13 was shown the witness, who pointed out the place on the ground where John was.) I went out to the door when I got out there I saw the Indians gathered around and John was scrambling with them. And I say Selso after he got out and the Indians were charging him. Selso was armed. I saw Selso shoot when I got out there. Before I went out I hear- shooting out there. When I got out there Selso was backing up and Francisco Lugo was charging him and

Selso whot over his head and down by the ground in from of him what I saw. Ambrosio had the gun and he shot Selso. I saw that. And finally he come at us. When Ambrosio shot Selso, Selso was standing out near the fountain there, between the fountain and the schoolhouse, that little drinking fountain. The directions are all turned around out there I have to stop and think about it. The drinking fountain is to the north. I saw Selso when he was hit, I thought he was hit, the way he acted. He kind of staggered back and then turned and ran. I was standing at the porch at that time, Mr. Stanley was there. Apapas was kind of between us, he was not just out towards the fountain, he was out near out the fountain when he shot Selso and then he came across there at us. He
226 was west of the fountain I believe. He came kind of cad-awampus, we call it. Diagonally across. As he got over in front of the porch he fired at us. He pointed at Mr. Stanley as near as I could see. Then we ran back into the schoolroom. I saw Mr. Stanley as I turned to run, I turned and looked at Mr. Stanley and heard him speak. He said "My God." I don't remember Mr. Stanley from then on. I evidently got in to the door before he did. I ran back in the schoolroom. Mr. Pederson came in with me in the schoolroom, he was at the door when I got there, going into the diningroom.

Q. Did you hear any shots fired while you were in the schoolroom.

A. I am not sure about that.

By Mr. ROBINSON:

Q. Now, I show you a photograph, Mr. Stevens, and ask you to look at it and state whether the general scene it depicts there, with the exception, of course, of the figure of the person that is standing, is one that you recognize.

A. Yes I recognize the picture. I have seen that place before. The whole — physically looks about the same as when I saw it last. The organ was not there, when I was there. The door is the same, the screen door was on there.

Q. With the exception of the screen door being omitted of what is that a photograph?

A. It — a photograph of the corner of that room, going out from the schoolroom into the dining room.

Q. What room?

A. The schoolroom going into the dining room at Coahuilla. With the exception of the screen door being taken off, that is the way it looked on the second of May, 1912.

Q. Which way did that screen door swing at that time?

A. It came open into the schoolroom. The wooden door
227 was there also. It opened out into the dining room.

Exception No. 57.

Mr. ROBINSON: We will offer that photograph as United States Exhibit No. 13 "A."

Counsel for the defendants objected on the grounds that it is in-

competent, irrelevant and immaterial, the picture contains a photograph of a man pointing to something, who evidently was not there at the time, which goes to show that the premises were not the same when the picture was taken as they were at the time when the offense is alleged to have happened.

The objection was overruled by the court in the following language.

The COURT: "The jury will understand the photograph only gives the general ou-lines of the building there, otherwise it will be received. To which ruling of the court counsel at the time excepted."

When I went in*o*t the schoolroom there I turned into a little room there, a little library room where I keep my schoolbooks. I went through into the diningroom, I first opened the screen door towards me and the- the other door through.

Q. If you went through did you close the door behind you?

A. Well, the screen naturally came shut, and I slammed the wood door. I turned into this little back room. Mr. Pederson went with me. We went in together.

Q. Now I show you a photograph, showing a range, a portion of a room and two doors and ask if this is a true photograph of the physical arrangement of the range and the two doors; in that room at the Coahuilla School on May 2nd 1912.

A. There was a little table in fron- of the door.

Q. I did *no*t ask you about the table, I asked you about the door the two doors and the range.

228 The COURT: Did the witness see anything bearing on this case after he went into the closet?

Mr. ROBINSON: I think he did.

The COURT: Very well, follow it up then.

Exception No. 58.

Mr. ROBINSON: We will offer this photograph as United States Exhibit No. 13 "B."

Counsel objected to the offer on the grounds that it is incompetent irr*el*vant and immaterial. The objection was overruled by the Court, to which ruling of the Court counsel for defendants at the time excepted. Photograph received in evidence as United States Exhibit No. 13 "B."

By Mr. ROBINSON:

Q. I show you a photograph of a view of a door and ask you if that presents the *semereas* the door by which you leave that kitchen going out of the school.

A. Going out of the dining room out of the back door.

Q. Is that the way it appeared on that day?

A. Yes sir, that is where the doors were. I don't know as the — beeing were held open. That is where the doors were on that day.

Exception No. 59.

Mr. ROBINSON: We offer that as United States Exhibit 13 "C."

Counsel for defendants objected to on the grounds that it is incompetent, irrelevant and immaterial. The objections was over-

ruled by the Court, to which ruling of the Court, counsels for defendants at the time excepted.

The COURT: It will be received.

The closet into which I ran has a window out of which I looked. I did not see anybody when I first went there, after a little bit I saw Ambrosio Apapas coming passed the window. He was going out in front of the schoolhouse, he was going around toward
229 the front of the school house when I saw him.

Q. Walking along? Show us where that window is, will you?

A. Here is the window right here. When I saw Ambrosio, I was holding this door shut and I looked out this window and Ambrosio was coming this way towards the front of the building.

Cross-examination.

By Mr. ESTUDILLO:

I was a teacher at Coahuilla on the last of July, 1911, until I left there in the middle of June, 1912. During the time that I was teacher at Coahuilla, I couldn't say how often I saw Leonicio Lugo, I had no regular time of seeing him, I don't know how many times.

Mr. ROBINSON: I have a question or two to ask and I don't want to interrupt later on.

Mr. ESTUDILLO: All right, we will gave way to the prosecution.

By Mr. ROBINSON:

Q. Did you afterwards go over to the house, after you left the school house after being in that closet?

A. Yes sir. I found Mr. Stanley there. * * * I don't remember taking his clothes off, he was lying down. I left Mr. Stanley there and went out. I saw Leonicio Lugo and went to him. He was down towards the front of the schoolhouse, some place. I motioned him out of the crowd to come towards me and he did and I talked to him. I told him Mr. Stanley was badly wounded, badly shot and asked him if he would interfere with me getting a doctor up there to him, and asked him if my wife would be safe to leave him there and he said she would be perfectly safe. That I would not be interferred with. I went back to the house to see Mr. Stanley and John came up. I sent John and Mr. Pederson after the doctor and stayed with Mrs. Stevens and Mr. Stanley. I don't remember that I assisted in taking Mr. Stanley's clothes off.

230 Cross-examination resumed:

I don't remember just how often I saw Leonicio Lugo, whenever he came up to the schoolhouse I saw him 3 or 4 times. I do not speak Spanish. I have talked to him in English about different subject- there in Coahuilla.

Q. I think you used the word "they" "they were talking to Mr.

Stanley in the schoolroom during the meeting." Whom do you mean by "they"?

A. They were talking to him.

Q. Yes, the Indi*nasm* you mean all the Indians present were talking to him?

A. They would talk to Leonicio and he would talk to Mr. Stanley through the interpreter. They would have a general talk among themselves, and then Leonicio would generally—I couldn't positively say always, but generally Ignacio interpreted it in English. John Largo and Adolf Lugo were there. The latter part of the time, if not all the time.

Q. In fact all the Indians of the reservation that were at Coahuilla at that time were at that meeting, w*h*ere they not?

A. So far as I know they were all there.

Q. Did Sanchez or Santos Lubo say that he, Santos Lubo, would take the bull out of his pasture -n order that Mr. Stanley might brand him?

A. Some of them stated something about bringing bulls down there in front of the schoolhouse and branding them there, and taking them off the reservation. I don't remember what it was now.

Q. Didn't Santos Lubo say that his cattle were wild, and that he, Santos, might take the bull out himself in order that Mr. Stanley might brand him, instead of having the men chase the cattle around?

A. I don't remember just what was said.

231 Q. Did Leonicio Lugo say anything about the bulls?

A. Santos had talked something about the bulls, and I don't know what Leonicio said. He said it in thei- language, but John tol*e* me afterwards, he told them, the rest of them would have a right, those that had bulls, to say what they had to say about it.

Q. Did Leonicio Lugo say anything to Mr. Stanley about bulls *ad* the branding of bulls?

A. He didn't, unless he said it through an interpreter.

Q. Did he or did he not?

A. He did not speak to Mr. Stanley at all. He spoke to the interpreter all the time.

Q. Was there anything translated by the interpreter as coming from Capt. Lugo in reference to the branding of any bulls.

A. I don't know where it came from. There was something said about Mr. Stanl*d*y branding the bulls.

Q. (But you don't know where it came from. There was something said about Mr. Stanl*d*y branding the bulls.)

A. But you don't mean to say i*y* came from Capt. Lugo, do you, in reference to the branding of bulls?

A. Most of the things that were said came through Capt. Lugo, through the interpreter. I would not say everything was—I don't remember just what was said.

Q. Did Capt. Lugo address Mr. Stanley direct through the interpreter?

A. Yes he talked to Mr. Stanley.

Q. Did he talk to Mr. Stanley about the branding of bulls through the interpreter.

A. I would not be positive whether he did or not.

There are two little window- up high on the outside of the school building, they are up high, a lit-le light is coming in at the
232 side not low like this but windows letting in the light on the north side. They were a good deal higher then a Man's head, I don't know just how many feet. There is a fountain about 20 feet in a northerly direction from the front end of the school building. I was sitting up at the front of the schoolbuilding on the north side, there wasn't any organ in the building when I was there. I saw Cornelio Lugo leaving that building. John came down after Mr. Stanley told him. When I first saw Cornelio John reached him at the door. There are two doors there and a hall way approximately 6 feet wide. I don't know whether John said anything to Cornelio when he tried to get him at the door. I don't remember hearing him speak. *There* were all talking down in there, several talking. I don't know how many remained in the building after Cornelio went out. There were a few. I remember Ignacio Costa remained and talked to Mr. Stanley a little bit. At first I saw Cornelio brush John back as he met him at the door. I saw John leave the building through the front door. I could not count the shots I heard. I did not hear any shots as soon as John went out. I was outside before I heard any shots. John Largo reported and was sent out for Cornelio the second time. Then I heard some shots, but I don't know how many. It seems to me it was several shots before I got clear out on the step. When I got out I did not see John Largo have a revolver in his hands. I never saw him touch his gun. When I got outside I did not see *have* John Largo have a revolver in his hand, too many crowding around him and over him. I could not see what John had. He was in the mix up there, part of the time he was on the ground struggling, trying to get up when I saw him. He did not have any gun as far as I could see, when he was struggling there.

Q. Did you see anybody striking?

A. I don't know there was too much scuffling. Celso went
233 out before I did. Some little time before I don't remember just how long. Things were happening pretty fast, there were not any shots fired until Celso got out to my recollection. Francisco was going at Celso, I don't remember seeing anything in his hand.

Q. You remember whether you saw anything, a revolver, a rifle or anything in hand, don't you?

A. I did not see any rifle in his, he might have had a revolver.

Q. You did not see a revolver in his hands?

A. I couldn't say that I saw a revolver in his hand.

Q. How close were you to him?

A. I was standing on the front step and he was 15 or 20 feet down there. He was charging with his hands (indicating) so I could not see what he had.

I never saw Celso shoot at Apapas.

Q. Did you see Celso shoot at all?

A. Yes sir. I don't know *whether* who he was pointing his gun at he was in front of Apapas. Celso must have had his revolver in his hand, if that is his revolver.

CARL A. PEDERSON, a witness on behalf of the government testified as follows:

My name is Carl A. Pederson, ad*tt*-onal farmer in the government service, reside at Banning, California, arrived at Caohuilla on the afternoon of May, first, 1912. Rode up with Mr. Stanley remember stopping at a*n* place call*l*d Bradford's Ranch, and talking with some people. Do not know Antonio Contrero. It seems to me that one of the men we met there was a Mexican. I went up to Coahuilla that day, stayed there over night, was present at Mr. King's house, when Leonicio Lugo came there. Heard the conversation Mr. Stanley had with him. After that went over to the school house and was present while the meeting was held between Mr.
234 Stanley and the Indians.

I heard the conversation as it was interpreted.

Q. Just tell us, as nearly as you can, what it was that you heard there, what you can remember, in your own way.

A. Mr. Stanley first asked them if they had an interpreter, and they said yes, and some man stepped forward and sat down in a chair beside the desk, and Mr. Stanley got up and asked them what was the purpose of the meeting, and Leonicio got up and said: "I have been elected Captain of these people, and I want to know what you want with Cornelio Lubo" or Lugo—I don't know which it is—Cornelio.

Q. What did Mr. Stanley say?

A. Mr. Stanley *siad*: "I don't recognize your appointment as captain of these peop-e because you failed to work in the interest of all the people, and on my first trip up here I offered to let you people elect your captain—or, your judge and police, and you refused to do so, and so I told you that the men that are now serving would continue until you were notified otherwise." Then someone else got up and—I don't remember whether they go- up or not—but someone in the crowd among the Indians made the remark: We heard you came up to brand the bulls today—" through the interpreter—and Mr. Stanley said "Yes, I had instructions to brand the bulls". Well they then told him that if he branded the bulls he would have to take them off the reservation.

Exception No. 60.

Counsel for defendants move to strike out the testimony of the witness Pederson on the ground that it is too indefinite that it does not refer to the defendants, that it is immatereal and incompetent.

Mr. ROBINSON: Who did the talking to Mr. Stanley?

A. Leonicio Lugo did most of the talking.

235 Q. I mean did he speak in English or the Indian language?

A. He spoke through the interpreter.

Q. And the interpreter was the one who did the talking to Mr. Stanley in English?

A. Yes sir.

Counsels for defendants objected to the testimony on the ground that it was hearsay. The court denied the motion to strike and overruled the objections in the following language:

The COURT: There is testimony here that it was interpreted. Of course the Jury can view the testimony in the light of that.

To which ruling of the Court Counsel for defendants at the time excepted.

A. Mr. Stanley told them that he co-ld *h*ot take the bulls away; he had no orders to do so, but he would write to Washington about it. If he was instructed to take them away he would take them away, and if not they would remain on the reservation. Then he read them some rules and regulations from the rule book Department of the Interior, 1904, I believe it is. I don't remember just what rules he read to them. And he told them that he was responsible for the enforcement of the laws of the reservation, and that they were not to move any fences or roads without permission from his office. He did not mean by that, he told them, that they were not to move any fences or roads, but that he wanted to know about it. He also read them Celso Serrano's letter of appointment, that he was appointed forest guard and police without pay; that they were to assist him in fighting fires if they were called upon.

Q. Tell us how the meeting ended.

A. Several in the room got up and filed out, and as they started to go out Mr. Stanley rose up and said,—called "Cornelio, I want to see you." The man who he called to walked right out, so
236 he said to the policeman, John Largo: "John tell Cornelio I want to see him." John went up and put his hand on him, and he pushed his arm and walked righ- on out. John turned around and came back and said: "He won't come." Then Mr. Stanley said: "Go out and bring him in." So John went outside. Before I went out on the porch Mr. Stevens got up and walked back there and he said, "somebody better help". Mr. Stanley told Celso Serrano, to go out and help John to bring in Cornelio and so Celso started outside and it was not but a short time as soon as they got outside, shooting commenced, shots were fired. I could not say how many shots were fired out there, there were not more than 5 or 6. I saw Ambrosio Apapas on the corner of the schoolhouse out a ways near the fountain, simply shooting around, and he passed the school house. I was in the door way in the hall way, looking out through the door. There were others standing in the door way. I did not see that he hit anybody from the position where I was. He turned toward the porch where Mr. Standly and Stevens were standing, they were standing on the porch in front of me, as Ambrosio Apapas came toward the porch I did not see what he did. Just an instant there I noticed the crowd and Mr. Stanley turned to come in and Stevens rushed by him and I followed him.

Q. Did you see any shooting there?

A. I can't say.

Q. Where did you go as you went in there, which part of the rroom did you go to.

A. I went through the schoolroom and opened the screen door and turned and went into the kitchen and dodged into a closet back there. Mr. Stevens I believe opened the screen door. I was behind him. As Mr. Stevens was opening it I was behind him. I went through the door after him. After I got into that
237 closet I do not know there was any shooting.

Exception No. 61.

—. I show you a coat Mr. Pederson, and ask you if you know whose coat that is.

A. That is my coat.

Mr. ESTUDILLO: We object to the exhibit of that coat, to the jury on the ground that it is irrelevant and incompetent and immaterial. It is not Mr. Stanley's coat, I though- perhaps that Counsel was exhibiting Mr. Stanley's coat.

The COURT: I don't know what it is leading up to. Of course it is not more material than my coat would be at the present ttime.

Mr. ROBINSON: We are only getting ready for the material part now.

The COURT: Proceed.

To which ruling of the Court counsel for the defendant- at the time excepted.

I had that coat on, on that day.

Q. I will show you a hole in that coat through one side of it and another hole in the other side of the coat and ask you if you can tell me how that hole got in that coat.

A. No sir.

Q. Was it in the coat before you went in that schoolroom that day?

A. No sir.

Q. Was it in the coat after you went through the schoolroom?

A. Yes sir.

Coat offered to be marked for identification as United States Exhibit 14. United States Exhibit 13 "A" a photograph shoing the witness and his attention called to a place over in the corner marked with a light spot and ask- if he knew, whether that
238 was there before that day he went in the school room.

It was not. It was there the next time I went in the schoolroom.

Q. I show you an envelope, sealed and marked with the initials C. A. P. Whose initials are they?

A. They are mine. I put them on there and at that time I enclosed something in the envelope.

The BAILIFF: One of the defendants left the court room, your honor.

Mr. ROBINSON: Your honor, one of the defendants has left the room.

The COURT: Who took him out? When did he go out?

Mr. ROBINSON: Just this moment. He walked out as I spoke. I

think, your honor, that it might be well to instruct all of the officers on that point now.

The COURT: I presume that an officer who has been appointed bailiff of this court will have sense enough not to remove a *rp*isoner from the court room during his trial on a murder charge.

Mr. ROBINSON: Note in the record now that the defendant Apapas has returned to the court room. Will your honor instruct the bailiffs that that should not occur again.

The COURT: The bailiffs of this court will never remove a prisoner from the court room during the trial unless ordered t*p* do so by the court.

By Mr. ROBINSON: Now, Mr. Pederson in that envelope which I showed you you find the contents, do you?

A. Yes sir.

Q. Are they in the same condition as *e*hen you put them in?

A. Yes sir.

Exception No. 62.

Q. The contents being a piece of lead, I ask you to look at it and state where you first got that.

239 *Q. The contents being a piece of lead, I ask you to look at it and state where you first got that?*

The question was objected — by counsel for defendants as incompet-n- irrelevant and immaterial and not part of the res gestæ. A piece of lead like that cannot be material to the issues of this case. The objection was overruled to which ruling of the court the counsel for defendants at the time excepted.

Q. Where did you get that?

A. It was taken from between the blackboard and the outside wall of the schoolroom there. Down at the floor. It evidently struck a joist and dropped to the floor.

Exception No. 63.

Q. Did you examine the hole there in the blackboard to see what relation the place where the bullet struck inside bore to the hole in the blackboard?

The question wa- objected to by counsel for the defendants as it calls for an inference or opinion of the witness in a matter that the jury is just as able to judge as the witness. The objection was overruled by the Court. T*i* which ruling of the court counsel *of* the defendants excepted *to* at the time.

A. I did.

Q. How far was that place from this hole in the blackboard about? How far distant from it, can you tell us in feet and inches?

A. I don't know.

Q. Can you show us about with your hands, indicating by holding your hands apart about how far from the place in the blackboard the place was where it struck inside?

The COURT: Was it 10 feet or 3?

A. Probably about 8 inches.

By Mr. ROBINSON:

Q. Wa- it above or below the level of this place in — black board?

240 A. It was on about the same line. It struck a joist, a 2 x 4 on the side wall toward that door in the back room, in the corner of the room. The bullet is *is* the same condition as when I found it. It has been in Mr. Thackeray possession for a time and then he handed it to me. I couldn't say how long he had it, not very long, a day or two. When he gave it to me it was in the same condition when I first saw it, there was no change in the substance or appearance.

Bullet offered and received as United States Exhibit 15. That hole in the blackboard was about 3½ to 4 feet high on the wall.

Exception No. 64.

By Mr. ROBINSON:

Q. Did you ever stand up with that coat along side that wall?

A. Yes sir.

Q. As you stood there how near to the same heights above was the hole in the wall and the hole in the side of your coat?

* * * Question objected to by counsel for defendants on the ground that it is irrelevant, incompetent and immaterial and especially on the ground that it calls for an opinion of the witness in a matter that the jury can judge as well as the witness can. The objection was overruled by the Court, to which ruling of the Court, counsel for defendants at the time excepted.

A. The height was about the same.

Q. Now did you look at that hole and observe whether it was a regular circle or an e-lipse and what its dimensions were about?

A. I believe it was circular.

Q. An exact circle?

A. Well, it went into an angle like, (indicating) but still circular in shape.

(TUESDAY, *March 11th*, 1913.)

241 United States Exhibit No. 14 was offered and received in evidence.

CARL A. PEDERSON recalled.

Cross-examination by Mr. ESTUDILLO:

Am Additional Farmer not a Coahuilla specially, but all the territory under Banning and Martinez. Before the 2nd of May I had made one trip to Coahuilla, I have never lived there at all. I was requested to go up there on the first of May Never saw Leonicio Lugo, the Captain until the morning of the second of May, that I know of. I can't say that I ever met any of the other defendants in this case. I did not know them personally on the 2nd of May 1912. I could tell it this time who talked among the Indians. I

could recognize them then. I could recognize them now. At the time that I was up there that one time, I saw Capt. Lugo. I did not see Pio Lugo, Agapito, Charley Arenas nor Patrick Casero. I do not understand the Indian language. The talking there was through an interpreter. Do not know Santos Lubo, Leonicio Lugo talked there and the interpreter. There were others that talked. I believe Ambrosio Apapas talked some. I don't remember what he said. I couldn't say whether the interpreter interpreted what Ambrosio said. Ambrosio Apapas certainly was at that meeting on the 2nd of May. I saw him there. Never saw him previous to that day. I identify him as Ambrosio Apapas, he sat in a seat, the next seat to me, and he was dressed in a blue jumper and blue overalls.

Q. Did somebody point out Ambrosio Apapas to you there as Ambrosio Apapas? at that meeting?

A. Either at the meeting or afterwards, I asked who the man was who sat next to me.

Q. What was there about him that attracted your attention at the meeting?

242 A. Oh, he seemed to be one that had a sort of antagonistic attitude toward the superintendent, Mr. Stanley.

Q. That is what attracted your attention?

A. Yes sir.

Q. From what did you infer that he was antagonistic—that is, that Ambrosio was antagonistic?

A. His expression and the tone of voice he would use in talking to the interpreter.

Q. What was the tone of voice that Ambrosio Apapas used that day?

A. Oh, a sort of angry tone.

Q. Did he yell?

A. Oh, not particularly.

Q. Well, not particularly. Do I understand by that that he did yell some?

A. Well, he did not exactly yell, but the man talked with an angry voice.

Q. Did he speak in a loud voice?

A. Loud enough to be heard around the room.

Q. What do you mean by an angry voice?

A. Oh, I could tell by the expression of his face and the intonation and inflection of his voice?

Q. By the intonation or inflection of his voice, what was intonation?

A. Angry intonation. Probably an evil inflection.

Q. What did Apapas say?

A. I don't remember. I don't remember one word what he said I do not remember what the interpreter said, what Apapas said. I know John Largo, saw him leave the building that morning between 10 and 10:30. There were quite a number of In-ians in the building after he went out. Probably more than 8? I could not say that there were 20. I couldn't say that there were 16 or 17.

243 Cornelio Lubo was going out the door way. Celso did not go out just at that time. Celso went out before I did. I

did not go out immediately after Celso went out. I remained in the building I heard some shots outside, I could not say how many. Approximately there were more than 5 or 6, I should thing. Don't remember hearing any shouting. I don't remember hearing any loud talk, but I am sure I heard some shots. I remained in the hall way there. I went through the door at the east end of the school building diagram "A" on the blackboard and from there I went into a closet. Mr. Stevens went into — with me. I had that coat on on the second of May, it was not buttoned up I wore it from Hemet to Coahuilla. I am 6 feet tall. That hole in the walls is 3½ feet from the floor, ap-roximately 3 feet I did not go out on the front steps of the school building on the second of May. I did not go outside the outer door. I stood in the hall way. I did not go out at all on the front steps of that building that morning, while the shooting went on nor immediately after. Did not see Apapas in the building immediately after the shooting commenced.

Q. You did not see Apapas at any other time than the one you said during the meeting, is that correct?

A. Oh, I saw him outside. I sat in the hall way and I could see out at an angle over where he stood. He stood over near the fountain there. Mr. Stanley was facing towards Apapas, I did not see Celso at that time. Did not see him shooting at Apapas. Did not see Celso at all, while I was standing in the hall way. I could not see him, I don't know whethere he was there or not.

Q. Did you see Mr. Stanley turn to go in the building.

A. I did not see Mr. Stanley particularly, there was more than one on the porch and as the crowd turned, why, Mr. Stevens
244 rushe- in and I fell in behind him. I went after Mr. Stevens and I am quite sure, I went in before Mr. Stanley. I did not see John Largo in the schoolycard there in front when I was in the hall way.

Redirect examination.

By Mr. ROBINSON:

I could not recognize some of these defendants in the school building. I had been on the reservation before May first one trip before, along in April some time. I was there probably a day and a half, something like that. Except for that day and a half, I had not been on the Coahuilla reservation until May first, 1912. This was the second trip, that is a fact, *Cesl.*

CELSO SERRANO recalled.

Cross-examination:

I know Chappo Luna. I know Bernardo Resvaleso. I did not say to these men in 1912 when I returned to the reservation that I thought I might have hit Stanley myself, but that I was not going to do it because Stanley was my friend. A few days ago I went through the house of Mrs. Apapas se-rching for a revolver because Mr. Hall and Mr. Dorr and District Attorney Robinson gave me orders.

Redirect examination.

By Mr. ROBINSON:

When I said that I searched through the house, I did not mean to say that I went in and looked in the house at all. All I did was to interpret you- request to Ambrosio Apapas' daughter. I did not go any further in the door that right inside the entrance
245 where Apapas' daughter was standing. Neither the woman, nor anybody else, turned a thing over or took a step to look in that room. I interpreted their refuse- to let us look around, they told us that they did not have a revolver.

(At this time, the government announced that its case was closed.)

Exception No. 65.

Counsel for defendants at this time moved the court to strike out all the evidence in reference to Patrick Casero, on the grounds that there is not a scintilla of evidence here that connects him in any way whatever with *a* death *the* Mr. Stanley. The only evidence introduced in reference to Patrick Casero, was that of Mr. Chambers, which does not connect the defendant, Casero, with any conspiracy. There is no evidence that Patrick Casero ever spoke a word at the meeting. There is no testimony that will justify the trial of Casero by this jury.

Counsel for defendants moved further that the testimony introduced in reference to every defendant other than Apapas be stricken out by the court on the grounds that there was no evidence of a conspiracy, or any evidence connecting the defendants, other than Apapas, with the death of Mr. Stanley.

The motion was denied by the court to which ruling of the Court the counsel for the defendants at that time excepted.

The language of the court denying the motion, was as follows:

The COURT: I think there is some evidence of a conspiracy. I will permit it to go to the jury, and if there was a conspiracy, there is as much testimony to connect one defendant as another.
246 I agree with counsel that as to some of the defendants, there is no testimony whatever. It appears that there was a conspiracy, either to kill Stanley or to do him some great bodily injury."

The Court at this time sustained the objection of defendants to the introduction of Stanley's dying statement in evidence.

Exception No. 65A.

At the close of the foregoing evidence in chief, offered by the plaintiff, the counsel for the defendants moved the court to direct a verdict for the defendants, submitting the same and reasons therefor, in writing, in the words and figures following:

That the District court of the United States in and for the Southern District of California, Southern Division, has no jurisdiction of the persons of the defendants nor of the subject matter alleged in the indictments against these defendants for the reason that the defendants are citizens of the United States; that the fathers of the

defendants were born prior to 1848 in the Territory known as "Alta California," which said territory became the state of California, under the jurisdiction of the United States of America; that Alta California was a part of the Republic of Mexico; That under the laws of Mexico, the defendants and their fathers were citizens of the Republic of Mexico; That by virtue of the trea-y of peace between the United States of America and the Republic of Mexico commonly known as "The Treaty of Guadalup- Hidalgo," the ancestors of the defendants herein became citizens of the United States, for the reason that they failed or refused to elect to continue, or to become citizens of Mexico; That none of the defendants herein, nor the ancestor of each or any of them, ever renounced such
247 citizenship; That thereafter by virtue of the Act of Congress, admitting the State of California into the Union, they became citizens of the State of California, and have ever remained such; That the defendants herein named were born within the limits of the United States, and have severed and given up all tribal relation, living separate and apart from each other.

The defendants in support of this motion introduced the following testimony:

The COURT: There are many matters connected with this case, of which the court is required to take Judicial notice. I presume you had better agree upon them before you start in. The court must, of course, take Judicial notice of the Treaty of Hidalgo and the laws of Mexico, in so far as they affect the// rights of persons or property within ceded territory. I presume, also, the court will take judicial notice of the executive order establishing this reservation, and will probably take judicial notice that the reservation is governed by the general laws and regulations applicable to other reservations. I assume that's the case.

Mr. JOHNSTONE: We will admit that.

It is admitted that this reservation was created by the executive order of President Grant, 1885-86, and since that time the Indians on the reservation have been in charge of the Indian agent and superintendent.

Mr. ROBINSON: That is the the fact and I presume also that the court wishes to consider in connection with the other laws *of* the act of admission of California and also the act of 1891 of the Legislature of California, ceding jurisdiction to the United States, over lands theretofore or thereafter to be ceded to the United States, in the terms of the Statute.

248 Mr. JOHNSTONE: The court will take judicial notice of that.

AUGUSTIN APAPAS was called on behalf of defendants, being duly sworn, testified through the interpreter as follows:

Direct examination.

By Mr. JOHNSTONE:

I live in Coahuilla, have lived there all my life. I cannot tell when I was born, but I know that I was born right there at Coahuilla, now called Ramona reservaion.

By Mr. JOHNSTONE:

Q. Do you remember that country before the white man came in, before the Americans came in?

A. He remembers when he grow*ed*, it was before the whites come in.

Q. Who ruled the country at that time?

A. Mexico.

Jose Castro was the Mexican governor of this territory at that time. The last Mexi-an governor before the Americans took hold of the country was Bautista Alvarado.

Q. Ask him if he remembers Pio Pico?

A. Yes, he remembers him.

I saw him lots of times. He held an official position. I don't know what it was, but he was an officer.

Q. Well, what office did he hold?

The COURT: As his official position is set forth by a decision of the Supreme Court of the United States, I think that is sufficient.

Mr. JOHNSTONE: I want to qualify him to testify as to facts at the time of the treaty.

249 Mr. ROBINSON: We concede that he remembers some things away back there, and the veracity of his recollection, I suppose, is for the statements to bear out or not.

Mr. JOHNSTONE: Of course we had to show the competency first. If that is conceded, I will proceed.

At the time the Americans came in the Coahuilla lived in the same place or about the same place they are living now. At that time we had brush houses. They called it tulle houses. The Coahuilla at that time farmed a little, but not very much. They didn't have cattle, but there was cattle up in this valley over here at the Mission. They had burros. They belonged to the Indians, but the Priest was looking after them, taking care of them. The Indians went to San Luis Rey to worship, the Mission was there. The Coahuilla lived separately and in their own houses. Each family living by itself.

Q. And did each particular family have a certain tract of land that it farmed?

A. Yes, they had little places where they were farming.

At that time, for a long time, they didn't have any sheep. But later they had some. I was baptized six times. A priest used to come to Coahuilla often to say Mass. He said Mass just anywhere outside where the Coahuilla people lived. The Coahuilla did not make shirts out of wool or clothes at that time. They didn't make any blankets. I don't remember that.

Cross-examination.

By Mr. ROBINSON:

Q. Who are the Tepamokinoks?

250 A. The Coahuilla.

Q. They used to be known as the Tepemokinoks, is that it?

A. Yes sir.

Q. And the first chief of the Tepamokinoks, that you remember was Batisto?

A. Batisto.

Q. How old were you when you remember Batisto; were you a little boy or a young man or grown up?

A. I was grown.

Q. Batisto ruled several tribes, several groups of people known by different names now, but who used to be known as the Tapamokinoks, didn't he?

A. Only the Coahuillas were Tapamokinoks. They had different names.

Q. They had different names. Now, tell me the names of the others who were ruled by Batisto as chief?

A. Los Coyotes and Chimukatems.

Q. And the others?

A. The Hullacolyuchaims.

Mr. ROBINSON: I will make a phonetic attempt at it (spells): H-u-l-l-a-c-o-l-y-u-c-h-a i-m-.

By Mr. ESTUDILLO:

Q. They lived at San Ysidro?

By Mr. ROBINSON:

Q. Where did they live when Batisto was chief?

A. The Hullacolyuchaims, why, they lived there.

Q. Near Ysidro?

A. Near Ysidro, yes.

Q. But they didn't live in a little place, they roamed all around that neighborhood, didn't they?

A. They lived there at the same place, a little place.

Q. And what other tribes or people were under Batisto?

251 A. Santa Rosas.

Q. Now, the chief was the one who decided disputes or fights between members of the tribe, wasn't he?

A. Yes, he settled disputes.

Q. And if he said they should be punished they were punished?

A. Yes.

Q. And he decided who could live on a piece of land and who could not? Now, what was it he said? (Addressing the interpreter.)

The INTERPRETER: Why, he says that they had all the land together in company.

By Mr. ROBINSON:

Q. That is, the tribe owned the land?

A. The tribe owned, the land, yes.

Q. And the chief and his council or the meeting of the head men decided any disputes about where one man should live or where another man should live, is that so?

A. Yes; they held councils and he called all the tribes over there.

Q. And this council and the chief decided disputes about the lands of the tribe, didn't the-?

A. Yes, they decided disputes when a man was in trouble.

By the COURT:

Q. In what way? Can you fix the date of this more definitely?

The INTERPRETER: When he appears guilty, they punish him, he says.

Mr. ROBINSON: Batisto, your Honor?

The COURT: Yes.

By Mr. ROBINSON:

Q. Who was the governor of Mexico when Batisto was chief?

A. Don Pablo Portillo.

252 Q. Who was the last chief of the Coahuilla-?

The COURT: How long ago was this?

Mr. ROBINSON: I think it would be found to be long about 1875, about the time of the allotment.

A. Fernando.

Fernando was after Manuel Largo. Fernando was chief after the Coahuillas went to live at the place they live now. He was the last chief.

By Mr. ROBINSON:

Q. You stopped having a chief and had only a captain after the government sent an agent there and put the Coahuillas on a reservation?

The INTERPRETER: He says that the young people don't know all those things.

The COURT: Speak louder.

Q. He says that the young people don't know all those things?

The INTERPRETER: Yes, and that Lubo is the captain now.

Q. In the old days when Batisto and Juan Antonio and the others were chiefs, the captain used to be the religious man of the tribe, isn't that so?

A. Yes.

Q. And he had charge of the Indian religious ceremonies, didn't he, the captain?

A. Yes, they have got their own religion, too.

Q. They have got their own religion, too; is that what he said?

A. Their own religion, too.

Q. You mean to say the Coahuillas would go to the San Luis Rey Mission for the white man's religion to be baptized, but for their own religion they had the captain of the tribe; is that a fact?

253 A. Yes, they had their own religion, too.

Q. The Coahuillas still keep these religions ceremonies, don't they?

A. Yes.

Q. And this council of the people, under the direction of the

captain, still decides which members of the tribes shall use different pieces of land, don't they?

A. Yes, they have got their—

Q. They have got their what?

A. They have got their pieces of land now all fences in; got some cattle and horses now. The government has set out their places for them.

Q. When there is any dispute or quarrel between members of the Coahuilla tribe about their land or property, the captain decides the dispute before it is taken to the superintendent, isn't that so, the captain and the judge?

A. They know all of these things and they settle the disputes, the captain and the judge.

Q. And the tribe elects the judge, doesn't it?

A. Yes.

Q. You remember when Juan Antonio was chief and he lived at San Mateo?

The INTERPRETER: Yes, he knows.

Q. And the Coahuillas or the Tapamokinoks were scattered all around at Loma Linda, Agua Mansa, Santa Ana, and all about the vicinity of Coahuilla, Romona, Riverside, and Santa Ysabel?

A. Why, they lived there then near Santa Ana and Rincon and Riverside, Hulapa and Agua Mansa and Pulatana.

By Mr. ESTUDILLO:

Q. Isn't Agua Mansa, Riverside and Pulatana the same as
254 Colton now?

A. Yes sir.

By Mr. ROBINSON:

Q. You never had your land fenced in until the government sent an agent there and he furnished fence on the reservation, did you?

A. They had their fences so the cattle wouldn't get in.

By Mr. ESTUDILLO:

Q. They had their fences?

A. Yes, sir, wooden fences.

Mr. ESTUDILLO: When did they first have the wooden fences?

The INTERPRETER: He don't know what year it was, but it was lately, he says.

Q. Lately?

A. Yes sir.

The COURT: What is that?

Mr. ROBINSON: He says he don't know what year it was, but it was lately.

Q. Who owned the cattle that you wanted to keep out by the fences?

A. Some of their own and Mexicans, too; their own cattle and horses and some Mexicans, too.

By Mr. ESTUDILLO:

Q. Pardon me. "Their own," you mean the Indians' cattle and horses and the Mexicans' cattle and horses?
A. Yes.

By Mr. ROBINSON:

Q. Before the government sent an agent and put the Coahuillas on a reservation, the council used to, if a man didn't till the land that the tribe gave him, the tribe council would cultivate and work the land that the tribe — him, the tribe council would give it to some other man, and give some of what was produced from the
255 land to the man's family, but none to the man who wouldn't cultivate his land; is that the fact?
A. They used to farm it all together?
Q. They used to farm it all together?
A. Yes sir.
Q. That is, the tribe?
A. That, is, the tribe farmed it.

Mr. ROBINSON: That is all.

By Mr. ESTUDILLO:

Q. Do you remember the Yorbas?
A. Bernardo Yorba, I worked for Bernardo Yorba ten years.
Q. Did your people work around, did they, to earn a living?
A. Yes, they worked all around.

Mr. ESTUDILLO: That is all.

Mr ROBINSON: That is all.

CHARLES H. THOMAS was called on behalf of defendant and testified as follows:

Direct examination.

By Mr. ESTUDILLO:

My name is Charles H. Thomas. I live at Hemet in Riverside County. I have lived for a great many years on what is known as the Thomas Ranch, which ranch is situated in Township 6 S, Range 3 E. I have lived there forty-six years. I went to the Thomas Ranch the 9th day of January, 1861. I know the Coahuilla Tribe. I saw — pretty often during the time I have lived on the Thomas ranch. I was only one Township away from them. A Priest came there every year, nearly, and baptized them and married the young ones. Afterwards they built a house of worship. That tribe commences at San Bernardino and runs to Martines on the desert south.
256 Their home place was in the San Timoteo Canyon. The chapel is still standing there on the Diaz Ranch, where they built it long before I ever saw the country. They had a chapel of their own on the San Timoteo.
Q. Do you mean to say that was just one building they had there?
A. Well, one part of it, that is where Juan Antonio lived and died.

At the time when I first knew them in 1861, or thereabouts, they had both cattle and horses. And some goats and sheep. They made coarse blankets. They women used to make this drawn-work. When I went there the first time I stopped at the place of old Victoriano. He was one of the old captains, and the bed that I slept on had lace work, that wide, (indicating), on the pillow cases and sheets. His grand daughter made it and her name was Rosario. The inhabitants lived in adobe houses. They cultivated the soil in small patches. Each Indian got whatever he chose, five and as high as ten acres. They raised corn, pumpkins, beans and barley.

Cross-examination.

By Mr. ROBINSON:

Q. When you first went out there you made a sort of a deal with the Indians, didn't you Mr. Thomas, so they wouldn't bother you about the land?

A. I bought the land from Juan Antonio.

Q. You say you bought it from him? You don't mean he gave you any title to it?

A. Well, — gave me jawbone title.

257 I gave him twenty-two head of cattle for that land, and no money.

Q. And you dealt with him as chief of the tribe?

A. Well, at the time, that Juan Antonio was chief, the government was similar to the royal family of Europe; they inherited from one to the other. When he died, he left no heirs, and those Indians broke up then into small camps. Each rancheria had its captain but the captain of each rancheria was similar to the justice of the peace. They had to account to him.

Q. And they regulated themselves so far as property rights were concerned?

A. Yes, they had property rights there. Their land was just exactly as ours is today. It was government land, and if you wanted a piece of land to cultivate, you asked permission and you got it, and the rest was land in common. The same as we hold.

I know about their religious ceremonies. They were under the Catholic church. They never had native ceremonies.

Q. Well, you heard the old Indian say just now that they did?

A. Well, he meant away back, but from the time of the Mission they were under the Catholic church.

Q. Do you know what ceremony it is that they hold on the first of May?

A. That's about what we celebrate as harvest. May day that is it about.

Q. Well, don't you know that they have a religious ceremony in the Indian religion for that day about the first of May?

258 A. Well, I will tell you: The Priest names some Indians to perform the ceremonies of marriage and baptism and funeral services that he chooses, and he learns how to recite it, the same

as they do, but if they had any secret religion, I don't know anything about it.

Q. You know that now the Coahuilla Indians hold councils of their people under the direction of the captain to decide disputes as to personal quarrels or quarrels over real property, or other property, don't you?

A. Why, they have their laws and decides their disputes. The justice of the peace and other officials are called in. I was attorney in one of the biggest cases that was ever there.

Q. Attorney for some of the Indians?

A. Yes. The other man died and another left a little son and the brother claimed the property or half of it. I was attorney for the boy under the Indians' laws.

Q. That was before the court under the Indian laws?

A. Yes.

Q. And they still keep a sort of a system of laws of their own?

A. Well, they decide just about as we do. They have a kind of a jury to decide just as we do. I have not been there for six years.

Q. Who made the law then?

A. Why, it was common law amongst them, the same as we do.

Q. Not anything that was made by any other government but by themselves?

A. Well, just about the same as we decide anything. They try to get at the truth of the matter and decide justly. It was a
259 penalty for a man to go and tresspass upon another one's field and take anything.

By the COURT:

Q. That was tribe law that they were administering?

A. Why, yes, just the same as we have. If a man trespasses on your land, you sue him for it.

By Mr. ROBINSON:

Q. But it is not the same as we have; it is a tribal law not made by congress or the legislature. You know the laws of the state, Mr. Thomas, are made by a legislature, and the laws of the government of the United States are made by congress, and you don't mean that these laws, which are known as the statutes, are administered by the Indians, but that they administer a tribal law of their own; isn't that what you mean?

A. Well, of course, now, when Antonio died he was the last of the royal family, of the Coahuilles. He left no heirs, and then every village had their captain, so they had that captain then, and then they advanced the same as you do in this town; They had a council and everything else, but there has been no chief over them since Juan Antonio died.

Mr. ROBINSON: That is all.

Mr. ESTUDIOOD: That is all.

The COURT: I think the situation there has been fairly well described by the last two witnesses. There is no dispute over it, is there?

Mr. ROBINSON: I think so, think it would simply be repetition. I have several witnesses but they are practically the same as the old man said on cross-examination.

Mr. ESTUDILLO: Do I understand the court does not care to hear this other witness?

260 The COURT: I don't — it is necessary to pile up testimony here that would be *nearly* cumulative and not be disputed.

Mr. ESTUDILLO: Then I will not call him your honor. I don't want to take any more time.

Mt ROBINSON: I * * * have some witnesses but I don't want to call them.

The COURT: Anything in the way of argument?

Mr. ROBINSON: I think not. The matter is pretty well covered by our previous arguments.

The COURT: If not, I am ready to announce my decision. I have ready decisions of the court of New Mexico, the District Court of New Mexico, and a number of decisions of the Supreme Court of the United States, and it seems to me the question presented here is one of easy solution. Under the laws of Mexico and the Treaty of Hidalgo, a few Indians in the ceded territory became citizens of the United States. That is established by the decisions of the Supreme Court of the United States, but the great body of the Indians did not. In the case of the United States vs. Joseph 1 N. M. 593, the court said: "It might cursorily seem that the wild Indians are included in the term 'Indians' in this section but such is not the fact, as by the usage of Mexicans, the term 'Habitantes' is limited to persons having a place of abode, and does not embrace vagrants or *nom* namods." The Supreme Court of the United States said in the case of People vs. Joseph: "When it became necessary to extend the laws regulating intercourse with the Indians over our new acquisitions from Mexico, there was ample room for the exercise of those laws among the nomadic Apaches, Comanches,

261 Navajoes, and other tribes whose incapacity for self government required both for themselves and for the citizens of the country, this guardian care of the general government." It is therefore established that certain Indians were citizens and certain were not, and the only question is how is that question to be determined. From the necessities of the case, it is a political question to be determined by the political department of the government. The President of the United States has established a reservation for these Indians; *he* has placed an Indian agent and superintendent over them, and they have acquiesced in the act of the government for a period of almost a half a century. This action of the political department of the government is absolutely binding upon the court, under the decisions of the Supreme Court of the United States In United States vs. Kagama it is said, "* * * and the Federal courts alone have jurisdiction to punish these Indians for the crime of murder committed on the reservation."

Counsel for defendants then and there excepted — the ruling of the court.

PATRICK CASERO, a witness on behalf of the defendants, testified as follows:

My name is Patrick Casero. I live at Coahuilla. Right now I live in jail. I have been here in jail eight months. I do farming a little bit. Raise a little crop of hay, and vetable-, and bean and corn and pumpkins. I was at Coahuilla at the fiesta on the 1st of May, 1912. On the 1st of May then come down, come down
262 from their homes to the village where they have a Catholic church and hold their services, you know. Before they go to the cemetery. At the cemetery they clean up the graves, whatever weeds that have grown there. In the afternoon, they place flowers on the graves there. I did not go in the afternoon to place flowers upon the graves. We stayed there by the barn pitching horse shoes. Some of the people went. In the evening we had supper and after supper services and after services a dance. That is the same way the people have been doing for years. They do that every year on the first of May. The next morning we had breakfast together at Juan Coste's house which is about two hundred and fifty yerds from the school house there at the village. Apapas was not there at that meeting that night. I don't reme-ber whether I saw his wife or his daughter there. In the morning of May the 2nd, after breakfast, we went down to the barn there and stayed because we couldn't stay around the house as they were having breakfast and we couldn't stay inside of the house. So some of us went down there to the barn, four or five of us, I guess. The barn is about 100 yards north of Juan Costa's house. I went over to the school house, yes. While I was there at the barn, I saw some men going in that direction then I thought I would go along with them to see which way they were going. I thought maybe they were going to the cemetery and I thought I would go along. I went with Ignacio Guache and Calisto Tortes. I got to the school house after the men reached there and saw them going into the school there. I thought I would go in there with them. I went inside and sat down. Mr.
263 Stanley, Mr. Stevens and another man whose name I didn't know and Ignacio Costa were there. No one asked me to come to the school. The first thing they spoke about was the captain being there. Mr. Stanley asked him what he was coming there to see him for. The Captain said that Cornelio had told him in the morning that Stanley wanted to see him, but he didn't know what for, and he had said that he would like to have the captain go over to the school and hear what he had to say to them. That was said in a friendly way. Mr. Stanley said that he did not know who the captain was, that Leonicio wasn't recognized by the department as a captain or as any kind of an officer on the reservation. Then the captain said he was appointed by the Indians there on the reservation. Mr. Stanley said he was coming up to brand the bulls, that he was up there for that purpose, so Santos Lubo said that he had a bull in his pasture which belonged to the government and if Mr. Stanley was coming up to brand the bulls he would gather up all the bulls together and brand them outside; that if he wanted them

branded that he would bring them down to the school close enough where he could brand them but Mr. Stanley said, "No." He would brand them just where they were as he was the boss he could do that. At that time I went outside and didn't hear what they said. I didn't hear them talk about the rules and regulations nor about Celso Serrano. I don't know if Celso Serrano was at the meeting. I didn't see Apapas inside there. I did not see John Largo outside of the school building. I went back into the school house and stayed there just a little while then Mr. Stanley asked the captain whether he had anything to talk about or say and the captain said no he didn't have anything and they got up, and went out. Cornelio
264 Lubo went outside of the school house. I didn't see John Largo come out of the school building because I went out a little ahead of him, I guess. I went right straight towards the front gate. The front gate is about fifty-five feet to the porch of the school house. I saw John Largo just as I went outside of the gate.

(After the usual admonition to the jury, recess was taken until 2 o'clock p. m.)

MAR. 11, 1913—2 p. m.

PATRICK CASERO recalled:

Direct examination resumed.

Just as I went outside the front gate I heard a shot of a gun, from behind me, and I then started to run, because the shot startled and scared me and I then took four or five steps before I turned around, but just before I turned around I heard another shot, and then I turned around and I saw Cornelio Lubo, and Agapito Lubo, Charley Arenas and Ambrosio Apapas together in a bunch at a place on the sidewalk about half way between the porch and the fence. I then went inside the gate and stood right there (placing his pointer on diagram B, on the lines marked as the sidewalk, at a place forming an angle west of the sidewalk, and near the bottom line). When I was right here I saw these fellows right there (pointing to the same place on the sidewalk as previously pointed to, and identifying it as the place where the bunch was) in a bunch and they were holding John Largo down. Agapito Lubo was right in the middle of the bunch I didn't see any of that crowd kick or strike John Largo; they were just holding him there. John Largo was holding Cornelio by the back of his coat right between the shoulders.

Q. Did you see a revolver?

A. Yes, sir.

Q. Pistol. You saw that?

A. He had it in another hand.

Q. Who had that pistol?

A. John Largo had it.

Q. Did anybody have hold of that pistol?

A. Yes, these other three men were holding it right there. Two men were holding the revolver and one was holding his arm.

I saw Celso Serrano come out of the schoolhouse building into

the front yard of the school. He had a revolver in his right
266 hand. He came out from the school and jumped off the step towards the north and then went off about fifteen ft., I guess, close to that drinking fountain there—he then made a little circle there, circled around; and at that time Francisco Lubo appeared in front of Celso and threw up his hands and said some words, but I couldn't catch what he said. Just as Francisco Lubo said something to Celso and threw up his hands, Celso fired at Francisco Lubo. Then Francisco Lubo kind of dropped, and then at that time the people scattered.

Q. Did you see whether Francisco Lubo there, the second one from this end, had a revolver in his hand?

A. No sir, he didn't have nothing. I didn't see anything in his hand. He just held up his hands that way (indicating).

When he held up his hands he said something to Celso but I couldn't catch what he said. After Celso fired at Francisco Lubo, Ambrosio Apapas started towards him. He got there just half way towards where Francisco was, and then Celso fired twice at Apapas. The first time Celso shot him, Apapas dropped on the ground, and then just as Apapas got up again Celso took another shot. Then Ambrosio Apapas got up and I saw him pull his gun, and then he fired at Celso, and Celso staggered a little bit, and then Celso turned around and went off. When Celso Serrano and Apapas were shooting at each other, Celso was right there (witness points to a place on the dotted line north of the southwest corner of the school-house and between the circle with many lines through it and the square with one line through it, on diagram B). Celso was facing this way, indicating the direction towards the front porth of the schoolhouse. At this time Francisco appeared right here (indicating a place below the dotted line north of the southwest corner of the schoolhouse, and near the figures 33 with a dot). At this time Apapas walked
267 from here (witness places his pointer at a place represented in the sidewak, and an inch below the place marked on the sidewalk as a circle with a cross in it). Then Apapas went here (witness runs his pointer in a northwesterly direction to a place near the dotted line upon which stands the figures 33 with a dot). When Apapas got to the place last described, Celso fired at him. I didn't see Mr. Stanley on the portch, but I saw him on the ground, right here in front of the steps (witness places his pointer near the front steps of the schoolhouse). I didn't see him go up on the porch. After Celso was shot he turned around and went towards the east back to the school building. I turned around and wallked out through the front gate in the fence around the schoolhouse. There is a gate between the schoolyard and the teacher's house, and a gate north of the schoolhouse, and then there is a gate west of the schoolhouse.

Q. Are all those the gates that you find there?

A. Yes sir.

I was arrested at the time I was up at Coahuilla in the morning of July 10th. Yes, somebody told me to come up to the schoolhouse

then; I was told that Mr. Hall was up there that morning about 9 o'clock, and I came and found the United States marshal there; and the rest of the people came there, too; we were all there together. Yes, I know Clarence Chambers and I worked for him for quite a while.

Q. Did you ever make the statement to him that the Indians didn't want Mr. Stanley and would get rid of him as they did Mr. Swayne?

A. No sir, I never said a thing of that kind.

Q. Did you tell him that you were waiting for a letter from Senator Estudillo?

A. No sir, I didn't know a thing about it.

Q. Did you know me at that time, Pat?

268 A. No sir, I never did. I had never seen you any place.

Q. Now, Patrick, did anyone ask you to come to that meeting at that schoolhouse on the morning of May 2nd? Now, we will ask that question again, for fear we didn't understand you right.

A. No sir. Nobody asked me to come there.

Q. Did you ever see Apapas carrying a revolver?

A. I never did.

Yes, I have known Apapas for a long time.

Cross-examination.

By Mr. ROBINSON:

Q. I believe you say that you were living at Coahuilla?

A. Yes, sir. That is where I was born and raised, and I have lived there ever since that.

I don't know just how old I am.

Q. Where did you learn to speak English?

A. Oh, when I was working around the ranches. I attended school there at Coahuilla, but not much; a few years.

I live about two and one-half miles southeast of the school. Apapas lives just south of the school.

Q. How big a place have you?

A. Why, I don't know just how big it is. That place ain't mine. It belongs to Augustine Hamilton. I and he both sleep together there in that place.

Q. As matter of fact, you have no place of your own on the reservation, have you?

A. Yes sir, I have.

Q. What is it?

A. That place was my father's.

Mr. ESTUDILLO: May it please the court, we object to that on the ground it is not proper cross examination.

The COURT: I don't know what it is leading up to. You may proceed.

269 Mr. ROBINSON: Well, since your honor has said that, I would like to state that I am not leading up to anything; I am cross-examining on exactly what Senator Estudillo examined

him on in Chief, as to what he did up there, and what he raised,—that he had carrots, and beets and everything else up there.

The COURT: You may ask him what he did in a general way. You may proceed.

I have got my own house. I have got two places there. One of them is close to the school, just a little south of there. I do not raise farm produce there, that is the pasture. I haven't got very many cattle there, but Augustine and I both keep them together there in that pasture. I have got about two or three. I don't know just exactly hif many there are. I raised the vegetables with Augustine on his land. I raised the hay on my own place, and sowed the barley seed for same.

Q. How much of the year did you stay on your place near the schoolhouse, the year before you went to the county jail here?

A. Well, I had that for a long time.

Q. Well, you were not on that very much that year, were you?

A. Yes sir.

Q. Were you living there?

A. I am not living there, but the home is mine.

I have got no home there—no house on it. When I am on the reservation I live with Augustine Hamilton.

Q. And you have been in the habit of going off the reservation for three or four months at a time working out at other places, have you not?

A. Well, whenever there is any work I have to go out and work so that I can support myself that way.

Q. That is the way you have supported yourself, by working off the reservation, is it?

270 A. Yes. Before the evening of May 1st, 1912 I had been at Coahuilla since I left Chambers' place on the 15th of July. I was working at Coahuilla fixing up my fences around the place, that is all the work I did. I don't know just how big the pasture is, I guess it is about twenty or thirty acres, something like that. Yes, I have that land fenced, but I never did measure it to know how many acres there is in it. No, Mr. Chambers did not discharge me when I left him, but he ran out of work. Because he ran out of work I couldn't stay there and had to leave.

Exception No. 66.

Q. When you went up there to Coahuilla you didn't know that San. Estudillo and Ambrosio—and Lugo had gone to Washington, did you?

Mr. ESTUDILLO: We object to that, your honor, as not proper cross-examination. There was nothing in the direct testimony of this witness on that.

The COURT: I think it is admissible in view of the last question you asked. He may answer. (Exception taken.)

A. I don't know whether Ambrosio Apapas went to Washington, no.

Q. No, Leonicio Lugo.

A. Well, you mentioned Ambrosio Apapas, didn't you?

Q. No, I changed it. Leonicio Lugo, Sen. Estudillo and Lupe Lugo.

A. I don't know whether they went altogether or not, because I didn't know, I wasn't there when they went, so I didn't know where they went. I don't know just how many went.

Q. Did you ever hear that they went?

A. Well, I have heard they went, but I don't know just who went. I know Lupe went, and Leonicio Lugo, the captain, went. I was not there when they went, but was there when they got back.

Q. Did you see Lupe Lugo and Leonicio Lugo and ask
271 them what had happened in Washington?

A. No sir, I did not see him until he got back.

Q. After you got up there at the Coahuilla Reservation didn't you talk to anybody about a letter that was expected from Washington, or hear anybody talk about a letter that was expected from Washington?

A. No sir, never did.

Q. Not a word said about it?

A. No. I was not there when Mr. Stanley made his first visit as superintendent in September, I didn't see him. I don't know where I was at that time, because I did not see him up there. Yes, I was on the reservation but I don't know where I was when he got there. Yes, I saw Mr. Stanley on that reservation before the morning of May 2nd. I saw him there sometimes when I got up there at the school. I did not see him at a meeting. I don't know what he went up to the school for; went up there to see how the school was running. Yes, I just saw him come up to the school, that is all. I did not talk to him.

Q. Do you mean to say that you were at Coahuilla on the 1st of May a year before this thing happened? Were you up there at the Coahuilla reservation at a fiesto on May 1st, 1911?

A. I was there, but I came down to work for Chambers.

Q. You were working for Chambers on that day, weren't you?

A. I was before, yes, the year before.

Q. Yes, the year before.

Q. You did not attend the fiesta up —, did you?

A. No sir.

Q. When did you ever go to any other fiesta on May 1st at Coahuilla before that time?

A. I don't remember just what year I had been up there,
272 but I had been before. More than once before. Yes sir, on that day, May 1st, I was there at church. Yes, I was in the church about half past nine or something like that and I stayed in there as long as the services were going on. Captain Lugo was conducting the services.

Q. Why do you call him captain? Was he captain at that time?

Mr. ESTUDILLO: Just a minute. We object to that, your honor, as not proper cross-examination.

The COURT: His status at that time is not a disputed fact in the case, is it, Mr. Robinson?

Mr. ROBINSON: He was not what is known as the captain.

The COURT: I say, that is an established fact here, it seems to me. He was not recognized by the government as captain.

Mr. ROBINSON: This is the point, that there was some election. It would go to the question of the cohesion of these people, as to whether they had themselves gotten together and elected and chosen him and recognized him as captain.

The COURT: I do not think there is any dispute that they did but the government refused to recognize him. That is my understanding of all the testimony.

Mr. ROBINSON: But it would leave it indefinitely that the people did, without putting it to any of these defendants. Each one, then, probably it could be argued, had nothing to do with it and did not recognize it, except what was a general understanding in the community.

Mr. ESTUDILLO: I do not see how that can be material in this case, and especially how it can be cross-examination. A man might be a captain and lose that title and still that clings to him. The other day we examined a prospective juror who was a colonel of the United States army. I imagine he is not a colonel at this time, and yet he is called colonel.

273 Mr. ROBINSON: Suppose this man was the political henchman of Lugo. They would have a mutual interest. We can look into his interest in any of the material affairs of this defendant.

The COURT: You are asking what his position was there, and I say there is not a particle of doubt as to his position. All the witnesses are agreed upon. Proceed.

—. Yes, I was there when Leonicio was elected captain on the reservation. That took place in about 1908.

Exception No. 66 A.

Q. You were there when Mr. Swayne discharged him as captain, weren't you?

Mr. ESTUDILLO: I object to that as not proper cross-examination, your honor.

The COURT: Answer the question. (Exception taken.)

A. I don't know whether he discharged him or not.

Q. Was there any election for the captain held by the people after you got up there in July, 1911 between that and the time Mr. Stanley was killed?

A. Well, we had this captain appointed for four years at that time, and when his time expires we reelect him again.

Q. When did that expire?

A. In June, I think; something like that—or in July.

Q. 1911?

A. Yes sir.

Q. That was after you left Chambers' place?
A. This was 1900—I guess it was 1912.
Q. Before or after Stanley's death?
A. That was before. We had him four years and this was in 1912 that we reelected him again.
Q. Was that a month or two before Mr. Stanley died?
A. It was close to three months.
Q. Where was the election held? In the schoolhouse?
274 A. No sir. We never do hold any meetings in the school. They hold the meetings any place. Leonicio was present at that meeting. I think Ambrosio Apapas was present.
Q. Were these other men present that you see here, the defendants?
A. Yes sir.

Exception No. 67.

Q. At that time did Leonicio tell you that he had already received a letter from the Indian service saying that he would not be recognized as captain on the reservation?

Mr. ESTUDILLO: We object to that, your honor, as not proper cross-examination.

The COURT: It seems to me it is getting rather remote from the direct examination. You may answer the question. (Exception taken.)

A. I don't remember whether he said it or not.
Q. Now, after the church service was over up there, where did you go?
A. I went to the cemetery.
Q. What did you do at the cemetery?
A. Helped to clean up the cemetery, the graves.
Q. Did you stay there to put flowers on the graves?
A. No, we did not put them on in the morning. We always do that in the afternoon.
Q. You did not go back to the cemetery in the afternoon?
A. No sir. I stayed over at Juan Costa's barn pitching horseshoes.
Q. Who else were over there pitching horseshoes?
A. I don't just remember who was there, but there were some boys in there, about three or four, something like that.
Q. Were these defendants here in the room there?
275 A. They are not boys; they are men. I do not call them boys. I had supper at Juan Costa's house.
Q. Were all these men, Leonicio Lugo and Ambrosio Apapas and the other defendants here at Juan Costa's house for dinner that night?
A. They did not come, but there was some in there.
Q. Was Ambrosio there for one?
A. I didn't see Ambrosio around there. He might have been there, but I didn't see him.
Q. Was Francisco Lubo there?

A. He was there towards evening, but I don't know whether he was there for supper. Leonicio Lugo, Cervantes Lubo, Agapito Lubo, Pio Lubo, Charley Arenas and Cornelio Lubo were there.

Q. Did you see John Largo over there?

A. John Largo was around there, yes sir.

Q. Did you see him talking to Cornelio?

A. No sir, I did not see him talk.

Q. Where did you sleep that night?

A. I did not sleep any that night; I stayed up all night.

Q. All of these men here that I have mentioned, all these defendants, stayed there all night, did they?

A. Yes, some of them were there and some were not there.

Q. Which ones did not stay there?

A. Pio Lubo, and I didn't see Ambrosio there. The rest of them were there.

Q. What time in the morning did you have breakfast?

A. I don't know what time it was. It might have been six o'clock or half past six; something like that.

Q. And that was in Juan Costa's house?

A. Yes sir, same place.

276 Q. Was Leonicio there for breakfast?

A. I guess he was, yes.

Q. Well, don't you remember whether he was or not?

A. I did not go in there with him to have breakfast.

Q. You saw him around the house, didn't you, somewhere?

A. He was around there, yes sir.

Q. And Ambrosio was there, wasn't he?

A. Ambrosio—I did not see him that morning.

Q. Where was the first place you saw Ambrosio that morning at all?

A. I first seen him he was there when they were holding this John Largo there, he and Agapito and Cornelio.

Q. Just what spot was Ambrosio Apapas the first time you saw him?

A. Right there is where I saw him.

Q. Point it out with the pointer on diagram B, where Ambrosio Apapas was the first time you remember seeing him on May — or May 2nd.

A. He was between me and John Largo.

Q. How close was he to those men holding John Largo?

A. Just like you are standing close to me.

Q. Ambrosio Apapas was standing within say a foot or foot and a half or two feet of these men who were holding John Largo when you first saw him?

A. Three of them were right there.

Q. And Ambrosio was standing within two feet of these men who were holding John Largo when you first saw him. Is that the fact? Was he as far from those men as you are from me now?

A. No, closer.

Q. They were touching, then?

A. Yes sir.

277 Q. Ambrosio Apapas was touching some of them?
A. Yes.
Q. Whom was he touching?
A. Charlie Arenas.
Q. As you came down the porch and walked out from the school building out towards the gate, you had no notion of any trouble did you?
A. No sir, not a thing.
Q. And you were calm and quiet and peaceful?
A. Sure, always.
Q. You saw everybody that you passed as you went down there?
A. I seen some men there, along there.
Q. You were not excited so you could not tell who they were?
A. I was not excited. I just walked right ahead, went right forward.
Q. You were one of the first men to get out of the schoolhouse, as a matter of fact, weren't you?
A. No, there was someone outside already.
Q. Several outside?
A. Yes.
Q. Who were, they, do you remember?
A. I don't know just who they were. I seen some men outside.
Q. You saw everybody that was in the school yard when you came out of the school building?
A. There were some still coming out.
Q. As you got to the door and you looked out, you saw everybody that was out there? You were calm and quiet and looked and saw them all, didn't you?
A. I did not look around; I just went right off the steps and out into the walk there. I did not turn around to see who it was and who was there.
278 Q. As you went down towards the gate did you see Ambrosio Apapas?
A. No sir, I didn't see him at the gate. But there were some men outside the gate there. I don't remember just who they were.
Q. But as you got to the gate you stopped when you heard a shot sound?
A. Outside the gate.
Q. You were outside the gate?
A. Yes.
Q. How far outside?
A. About two yards; something like that.
Q. Nobody rushed by you as you stood there at the gate trying to get in, did they?
A. No sir. I just went right out and nobody was in a rush to get out or get in. I just went out there, when I heard two shots go off.
Q. And the first think when you turned around and looked back there towards the school building what you saw was this group with Ambrosio Apapas right close up to them?
A. Yes sir, holding John Largo.

Q. Don't you know that Ambrosio Apapas was in the school building and came out after you did?

A. I don't know whether he did or not. I cannot say that he was.

Q. You cannot say that he was not, can you?

A. No sir.

Q. After your breakfast over there you said you went outside because you couldn't stay inside the house, other people were having their breakfast?

279 A. Yes sir. I then went towards the barn but did not see Leonicio Lugo there. Yes, there were four or five of us that went down there, something like that. When I went down there Leonicio was somewheres around the house, I don't know where he was. No, the people had not gone over to the schoolhouse when I went over towards the barn.

Q. How many of you gathered around there at the barn altogether?

A. I don't know. I did not count just how many were there. There were some of them there.

Q. There were not so many that you would forget who they were, were there, Pat?

A. No, not so very many. Just about five or six; something like that.

Q. Tell us who the five or six were.

A. Well, I don't know just who they were. Some boys there.

Q. None of these men who are defendants here?

A. No sir, none of them.

Q. And how long did you stay there at the barn?

A. Well, stayed there a little while.

Q. Were you standing there talking?

A. Well, we were just talking about things. We were just standing there.

Q. About ten or fifteen minutes?

A. Oh more than that.

Q. You stood still there doing nothing more than — ten or fifteen minutes did you?

A. Yes sir.

Q. Well, how long was it—half an hour?

A. Something like that.

Q. Just talking with these young boys?

A. Yes sir.

Q. And you, didn't see Leonicio Lugo go out of Juan

280 Costa's house with some other man, did you?

A. Well, I seen—Not from Juan Costa's house; I seen him up on the hill there.

Q. Up on the hill?

A. Yes sir.

Q. Up near John Largo's house?

A. No sir, there is no hill at John Largo's place. Right there this side of the Catholic church, there is a little hill there, isn't there?

Q. You mean the hill that is to the east of the school house?

A. No sir.

Q. It was east from the school house?
A. Just to the north a little ways.
Q. The Catholic church is directly north of the school house, is it not?
A. Just this way then (indicating).
Q. That is north. And the Catholic church is a little lower down than the school house, is it not?
A. Yes sir.
Q. Now where is this hill you are talking about?
A. It is out this way. A little northwest.
Q. Northwest?
A. Yes sir.
Q. How far away from this school is there any hill to the northwest of the school?
A. There is a little hill back there (indicating on diagram).
Q. Do you recognize this picture, United States exhibit 4, taken from the reservior up here in back of the teacher's house (showing photograph to witness)? You can see the teacher's house there, and the school house, and the Catholic church. Is that hill over there beyond the Catholic church the one you mean?
281 A. This is the one (indicating). That is not Juan Costa's house, it is over the hill. Just over the rear Peak of the Catholic church and the barn is near that. The people were gathered at Juan Costa's house. Leonicio and thes- other men were walking along this way, there were four of them, Leonicio, Cornelio Lubo, Juan Costa and Ignacio Costa. Juanito Casero was not with them. He was there at that meeting that night. He might have—at the one in the morning, but I did not see him. At that meeting I saw Sanchez Lubo. At that meeting I heard him say he had a bull in his pasture and that Mr. Stanley could get him out and throw the rest of them together and brand them. That is what he said if Stanley wanted them they could drive them down there close to the school to brand them. That he would drive them down for Mr. Stanley. I didn't hear anybody at that meeting say anything about taking the bulls off from the reservation. I was not there during the whole meeting I went outside. I stayed a little while in the meeting then I walked outside and went down for water. Walked on out by myself. They were talking about the bulls when I walked out. When I came back they were not doing anything, I just came in there and sat down in a seat and at that time Mr. Stanley asked Capt. Leonicio Lugo if he had anything to say to him. The Capt., said "no". I dnon't think I heard them say anything about Celso Serrano's appointment as forest Guard When I went out for water I remained outside half an hour or a little over, something like that. I went outside and walked around for half and hour all by myself. I say that when I star-ed over there from Juan Costa's barn with those young boys I saw some men going into the school building. I only saw Leonicio Lugo, Juan Costa, Ignacio Costa and Cornelio Lugo. They started out four of them and thenn after a while I saw some more, some men follow-
282 ing them; I don't know how many they were, but there were some men going along—coming from Juan Costa's house.

Q. All the men that had been over at Juan Costa's house that *o* morning for breakfast, is that it?

A. It might not have been all the men, no. About half of them or some of them.

Q. But all the men that went over had been men that were at Juan Costa's house for breakfast, were they?

A. Yes sir, they had been there that night. When I got over there they had not entered the schoolhouse, I did not see Mr. Stanley among them, they were standing out along the lane there. They were not in front of Mr. Steven's house, but in front of the scho*ll*, or somewhere along there in that lane. I don't know where Leonicio was standing. The last time that I saw him he was going into the school. I saw him walk into the school and the other Indians followed him. I saw Leonicio in the meeting. I was at the rear of the room at the south side the south west corner. Leonicio was sitting right here. (Indicating). The place about two inches from the front seat on that row, right opposite the *th*eacher's desk. I don't know whether he was sitting on a cha*ri* or one of *o*the school benches. But I think he was sitting on a chair. I couldn't say that Juanito Casero was right behind him. I don't think Juan Costa was right there; I think he was in the second row of seats. I did not see Ambrosio Apapas sitting over there in the second row of seats. I didn't hear him say anything in the meeting. I have known him all my life. I did not see just where Pio Lugo was. I didn't see him when I went in there. When I came back into the school house I sat down in the same place.

Exception No. 68.

Q. There wer- chairs all around the back of those desks that Mr. Stevens had put around for the Indians to sit in were they
283 not?

Question was objected to by counsel for defendant on the ground that it is not proper cross examination, that it assumes that Mr. Stevens put those chairs there and that the witness said so which is not the fact.

The objection was overru-ed by the court, to which ruling of the court counsel for defend*t*ant then and there excepted.

A. I didn't see any chairs around there?

By Mr. ROBINSON:

Q. There were chairs around there at the back of the room? That were placed there by Mr. Stevens, w*h*ere they not?

A. I don't know. I did not see any chairs there when I went in. There were 18 or 20 Indians and three white men in that room. The Indians were all sitting down. The first thing that was said by Mr. Stanley was an inquiry what Leonicio had come there for. Leonicio told him through the interpreter that he had gone over there to listen to what he had to say to Cornelio Lubo.

Q. Did Mr. Stanley say "What is the purpose of the meeting?"

A. He did not say anything, he did not mention anything.

Q. Did he ask*ed* them what they had called the meeting for? or did he asked Leonicio what he wanted?

A. Well, he ask him what he wanted to say to him. And he told him that Cornelio Lubo had told him that morning that Stanley wanted to see him.

Q. Did Leonicio say that if Mr. Stanley had anything to say to any of his people he would have to say to Leonicio, because Leonicio was Captain?

A. No, it was not said that way, but Mr. Stanley said that Leonicio *said that* was not known as captain or any kind of an officer in that reservation. Leonicio'- reply to that was that he was
284 the captain of that reservation appointed by the Indians. He did not tell Mr. Stanley that he came there as captain to see what Mr. Stanley wanted with the people. He said Cornelio told him to go over there with him and listen to what he had to say to them. I did not hear Leonicio tell the other Indians to speak up and say what they had to say if they had bulls. There was nobody talking then. I did not have anything to do with the bulls, I did not have any bulls, I have some cows, yes sir.

Q. When you all got up to go out did Leonicio say, "Well, there is nothing mor- to do, let us go out"?

A. Mr. Stanley asked him if he had anything to say to him and then Leonicio said he didn't have anything to say, through the interpreter. Leonicio got up then and went out. He did not tell the other- to come out. The reason I went out, was because I just wanted to go out, I had nothing to do in the schoolhouse, I couldn't stay there all the time. Some of the Indians went out. I don't know whether any of them stayed in. I did not look back Cornelio got out after I did, I did not see him go out before me I said I heard one shot fired and started to run, towards the west right forward, across that lane. I went as far as 15 feet about, before I turned around, I heard another shot, two altogether I heard one and I started to run and then I heard another and turned around, I couldn't see who fired those because I had my back towards them, I couldn't see who fired them. I turned around and walked rigth back to the gate. I saw John Large holding that gun and Apapas, Agapito and Charles Arenas holding on to the gun. I saw who got it away from John Largo, Just as I walked inside the gate there I heard Apapas say, I have got the gun and by that time Celso came out from the school house, just as Apapas got the gun.
285 I said that after hearing the second shot this group of four men were holding on to John Largo and struggling for his gun Ambrosio being there, Celso Serrano came *down* off, of the porch right out of the schoolhouse, alone. He jumped off, toward the fountain, I did not see anybody in the group in front of him with any gun in his hand. Celso had his gun in his hand. He went just near the fountain before he fired at anybody. He made a little circle before he fired. I mean that he just turned around this way a little, made a little circle, then he fired at Francisco Lugo, when he got in front of him and threw up his hand this way (Indicating.) I don't know whether Francisco Lugo was over on the path, but I saw him right there in front of him. Francisco Lubo was there close to the fountain when Celso fired at him. He was not following Celso over to the fountain but when he turned around

it seemed to me Francisco was in front of him. Francisco did not have a gun in his hand. I did not see anything in his hand, I don't know whether Celso pointed straight at him, but he fired at him. Once or twice, not twice but once. I did not see whether he fired at the ground or up in the air. Celso was not firing in my direction. Celso jumped off the porch, he jumped sideways off the steps, not off the porch, he made a litt*el* circle this way and then by me I saw Francisco who was right in the place where Celso had passed a moment before. I did not see him following Celso, they were standing with their sides towards me, when Celso fired that one shot Francisco dropped down at the ground, at that time Ambrosio came up towards them, Ambrosio did not have a gun in his hand. When Celso fired at him twice then he pulled out a gun. I don't know just where he had it when he pulled it, but I saw it when he had it in his hand.

Q. Now Casero you describe Celso as standing near the fountain Francisco was standing in almost a direct line between Celso and the corner of the schoolhouse, and Ambrosio walked up the
286 path toward the front of the schoolhouse and then went out toward the fountain and stood in a d*ri*ect line between the fountain and the front steps of the school, when Celso shot at him is that right?

A. I did not say he walked up toward the steps.

Q. Show us how he walked.

A. I say he walked this way right in there, he walked this way.

Q. He walked from a place half way between the porch and the gate directly in line toward the fig. 33, that marks the dimensions between the fountain and the schoolhouse porch, is that right? Walked right in the — line up toward the fig. 33. Is that correc-?

A. Right up here. When he was right there Celso fired at Apapas. Apapas dropped on the ground and when he got up Celso fired another shot at him, at that Celso kind of side stepped up this way and Ambrosio fired at him. Celso stepped off in the direction of the south ea*w*t corner of the diagram, Apapas shot at him at that time. I don't know whether he hit him or not, but Celso staggered, then Celso turned around and made a little trot right off this way, (indicating the *the* top of the diagram or the back fence of the school yard) then Ambrosio Apapas followed him up a little bit to the rear line to the schoolhouse dining room, I do not know which way it was but about that, I saw him when he turned around this way and then I did not see him any more, I turned around and went out the gate of course. I went out in the lane in front of the schoolhouse, stayed there a little while and took a drink, did not hear any shots while I was getting a drink. After I got a drink I went right straight out towards the barn, Juan Costa's barn. I went up there alone. At the time I saw Mr. Stanley he was walking around in front of that step there, a litt-e bit toward Celso. He did not get very far, I saw him right there in the path in front of the porch, that was just the time Francisco shot, just about the time
287 Francisco dropped, I saw Stanley in front of the school down on the ground, while Celso was firing at Ambrosio, I think

Stanley was stadning there, looking this way. I don't know what he was doing.

Q. Just as Ambrosio was walking with Celso you saw Mr. Stanley in front of the schoolhouse steps, is that right?

A. Yes sir.

Q. He was looking towards Celso was he?

A. He walked off towards this way. He walked two or three steps I don't know whether he stopped and looked at Celso or not. I did not see Mr. Stanley when Celso turned and trotted back and Apapas went after him. I just turned around there and went out, I said Celso fired one shot at Francisco and two at Ambrosio, I heard two before I turned around and after I turned around I heard four. Those were all the shots I heard there in front of the school. After the trouble at the schoolhouse I did not see John Largo's pistol. I was not in the party that went down to Riverside, I saw them start off. They were Capt. Leonicio Lugo, Cornelio Lugo, Francisco Lubo, Ambrosio Apapas, Santos Lugo and Judge Juan Costa, there were two wagon loads of them. When I first turned around after I heard those two shots, Ambrosio Apapas was not the man nearest to me, Cornelio was the nearest, his back was turned toward me, John Largo was standing right on the side of him, John Largo was holding the gun in the left hand and was still holding Cornelio's coat with his right hand, with one hand. Agapito was next to John Largo, he was holding his arm there, the other man in the group was Charley Arenas, he was on the side of Agapito, their backs were not turned towards me they were facing towards me. They were not in front of John Largo they were right on the side here. John Largo's back was towards me and their faces were towards me. Apapas was standing near *whe* where Charley Arenas was. I don't know just how near Charley Arenas was standing to John
288 Largo, he was right between Ambrosio Apapas and Agapito, they stood there just a minute or two. Three of them had hold of John Largo, they were Ambrosio Apapas, Agapito Lugo and Charley Arenas. Francisco Lubo was not in that group I did not see him. I did not see them get the gun away from John Largo, but Ambrosio Apapas said he had it. When he said that he walked away from the group. I did not see them knocke John Largo down. He was standing right up all the time that I was looking at him. Before I heard the shot I did not hear any shuffling, sound or anything.

Q. Now, there was not time while Apapas was firing at Celso that Apapas * * * pointing his gun towards this porch, was there?

A. I don't know, I did not see him. The only one that was firing towards the steps was Celso Serrano. I saw Ambrosio the first time he fired. I saw him fired only once and that was away from the step.

Redirect examination.

West of the front gate of the gate in front of that walk which leads out from the schoolhouse porch there is a road across there a lane. There is a watering place or barrel at that place.

By Mr. ROBINSON:

Q. How did he walk over there towards Celso Deliberetely and quietly or did he rush over ther- and yell at him?

A. No he did not rush over, just walked over quietly. He did not jump towards him, he did not yell, I did not hear him yell.

By Mr. ROBINSON:

Q. He just went quietly over there and only fired when he was fired at?

A. Yes sir.

PIO LUBO, one of the defendants herein, sworn in his own behalf testified through Condino Hopkins, acting as interpreter as follows:

289 Direct examination.

By Mr. ESTUDILLO:

My name is Pio Lubo, I work at Hement for Mr. Algger Fast. My wife is dead I got 5 children. I don't know Antonio Contrera, I never saw him. Went to the meeting on the second of May last year, went to the school house, the school house at Coahuilla. I went from Hemet and took some flowers from the grave. I got the flowers at Fast's place. It was the first of May when I got to Coahuilla. I had been working at Hemet for quite a while. I took my daughters along with me from Hemet to Coahuilla. At Coahuilla I cleaned the grave of my wife and two children. The night of May the first I slept at Juan Costa's house with my children. On may the second I saw some people going into the school house and I went right with them and sat down. I did not say to anyone if you fellows are afraid "I will put him out by the hair." I never said anything — bulls or anything of the branding of bulls. I saw John Largo and Celso that day at the Coahuilla school. I saw what happened there that day at the school house that morning. I saw that John Largo cut Cornelio from behind and *went* Cornelio went around John fell over. Then John Largo got up and got his revolver and fired at Cornelio. Cornelio and Agapito, Charley Arenas and both Apapas cought John Largo. They did not have John Largo on the ground. These men that I have mentioned took the revolver away from him. Celso came out from that house, he had a revolver in his hand. He saw Francisco Lugo standing in front of him and hold up his hand and said to him not to do anything to be quiet. When Francisco held up his hands, Calso fired at him, once. After shooting at Francisco Lugo, Celso went around and then he was shooting at Ambrosio. When Celso shot at Francisco Lugo, Francisco did not do anything, he fell on his knees.

Cross-examination.

By Mr. ROBINSON:

290 When John Largo fired his gun off, I was standing on that sidewalk. Cornelio Lubo went out of the school house before I did. I was sitting right there. (The witness *inidcates*

with a pointer the last seat to the right of the door as you enter it.) Everybody walked out when I went in there to sit down. That was the first time that I had been in the school room that morning.

By Mr. ROBINSON:

Q. Then you were standing on the porch and you saw John Largo go down the path and take hold of Cornelio, is that a fact?

A. He passed me when I was coming out and caught Cornelio outside. As soon as he caught Cornelio, Cornelio tipped him over, I saw it. That is the only time John Largo fell down off his seat that morning. Then John Largo got up and pulled his revolver with his hand, he was pointing right straight where I was standing and when he fired to Cornelio. I fell to one side. Cornelio was about 8 feet from John when John fired. Cornelio was right at John when John pulled his revolver. Cornelio held his hand and I was standing over there 8 feet away, and he was pointing right at me so I fell to one side when he fired. When John Largo pulled his revolver, Cornelio caught his right hand. And Ambrosio Apapas, Cornelio Lugo, Agapito Lubo and Charley Arenas took the gun right away from John. When the revolver went off they all caught his hand. John was not doing anything with his left hand. I could not see whether John had a hold of Cornelio at any time with his right hand. Too many were holding him. They did not knock John Largo down at the ground. I saw Ambrosio take the revolver from John Largo. Then he and Celso began shooting. Ambrosio came out to one side, and Celso came out to one side and fired at Ambrosio twice. Ambrosio fired once at Celso and Celso ran away. I was coming right down, I stood right here, (indicating a place in the path, about half way to the middle distance of the path). I was standing there looking at
291 them, they were taking the gun away from him, but I couldn't see who was taking the gun, but when Ambrosio went out, I saw he had the gun, he was putting it in his hip pocket. Ambrosio was moving this wasy (indicating a course about the middle of the path, in the direction of the fig. 33). It did not take him very long, but when I saw him from here, he puxxed his revolver away and he was walking this way. I was not looking at him all the time. I saw him, then I saw Celso came out from here, he was coming right straight to the fountain, he was shooting at Francisco right there, (*Indicating*) and he came around here and fired at Ambrosio. It was after Ambrosio got the gun that I saw Celso come out of the school house. I saw Celso shooting at Ambrosio, when Ambrosio fell to the ground. Celso at the time he fired and Ambrosio fell was standing right there. (indicating a place exactly between the circle with three lines across it and the circle with one line across near the fountain in Diagram "B"). When Ambrosio got up he fired at Celso and Celso ran away. He got up at the same place he had fallen down and fired at Celso once. I was standing at a place in the walk where the word "walk" appears. I saw Mr. Stanley when he came out. Saw him come down this porch and I did not see where he went from there. I saw

him come off the porch down onto the ground. That was not before Celso came out. Celso was coming out ahead of him. Mr. Stanley did not walk out towards me. I did not see which way Mr. Stanley walked after he came out. They were shooting and I couldn't see which way he went. After Ambrosio fired that shot at Celso and Celso ran away I did not see anything I went away. I walked right out the front gate and went home. I went to Juan Costa's barn. I went around the road. While I was walking on the front walk I did not see John Largo anywhere. I did see somebody on my way home, I saw lots of them around. Right after
292 Celso ran away I went home I did not hear any shots after that. My home is east of John Largo's house, but I don't stop there. I stop at Sanchez Lugo. The reason I went to Juan Costa's barn after the shooting, was, that my rig was there, my horses were there, and my children were there. I did not leave Coahuilla that day, but went to Sanchez' place. After leaving the school house and going to the barn I did not do anything. I went up right away when I got to the barn.

The COURT: That is he hitched up and went home, I presume that is what he means.

I left Hemet early in the morning the day before while it was kind of dark. I did not know what time. I haven't any watch. I think I got to Coahuilla about 12 o'clock. When I got there I took the flowers to the church and left them there. In the evening we all went to the cemetery, but I left my flowers in the church to get baptized. After I left the cemetery I went to Juan Costa's place from there. Leonicio Lugo did not stay at Juan Costa's barn that night. Nobody was there but myself. The people stayed up all night at Juan Costa's house and danced but I did not see them what they did that night. I went to bed in the evening, I don't know what time I got up in the morning, but it was pretty late. I got my breakfast of Juan Costa's. I did not see Leonicio Lugo there, when I got my breakfast, he was outside, lots of them were outside. They were outside walking around, some of them at their homes. After breakfast I did not go and talk to them. I went to the barn again, took the children back. I did not do anything in the barn, I just took care of the children in the barn. Don't know how long I stayed in the barn, but was there quite a while. When I came out of the barn I saw them going from the barn and I went over with them. They all went and I was
293 there quite a while when I went afterwards.

The COURT: I have no desire to comment on the facts, but I understand there is no dispute but what substantially all these defendants and about 10 or 15 Indians went over there. That they all went over there, except Apapas, I understand is conceded.

Mr. ROBINSON: We did not concede that he went over there.

The COURT: No, of course.

They went over the hill, I saw them and thought they were going to the cemetery again, so I went behind them. I was there quite

a while, but when I went in the schoolhouse they were all ready to come out. I did not count how many Indians were in the school room, but as soon as I went in there and sat down, they all came out.

By Mr. ROBINSON:

Q. And from the time that you got in there until the time that you got out, you never heard said anything by anybody, nor said anything yourself, is that the fact?

A. When I went in there and as soon as I sat there everybody walked out. I did not hear anybody say anything. I did not say anything myself, everybody went out, so I went out.

Redirect examination:

By Mr. ESTUDILLO: Ask him Mr. Interpreter, if he has been in the habit of going to those Fiestas every year, or was this the only Fiesta he has ever gone to.

A. I always go there when I am around because my wife and children are buried there. I go there to decorate.

Mr. ESTUDILLO: I desire to ask him if he ever attended a Fiesta before that first of May, 1912, on the first of May?

A. We always get there on the first of May.

PABLINO LUBO *xxxxxd*one of the defendants on behalf of the defendant- — as follows, Condino Hopkins acting as interpreter:

294 My name is Pablino Lubo. I am a brother of Pio Lubo. I *liever* at Coahuilla, I don't know how many years but I was born there on the first of May I was at Bradford's Ranch on the first of May last year. Don't know Antonio Cotreras. Never saw him before. Never told him that the Indians were going to kill Stanley. Went over to the cemetery at the Coahuilla reservation on the first. Went over to place flowers on the graves of my people. I went over to the catholic chapel that evening. I did not go to the Fiesta that night. Went over to the schoolhouse the morning of May the second. I think about 9 o'clock. I went into the schoolhouse and sat down, in one of the children- seat-. John Largo and Celso were present at that meeting. I did not hear anyone talking there Ignacio *Coasta* was there, he was talking to Stanley. I did not understand him. I did not hear what Ignacio *Coasta* was saying, I was sitting near the entrance.

Cross-examination.

By Mr. ROBINSON:

I was sitting in the back end of the schoolroom right there. (indicating the front seat on the left hand side as you went in the school.) I went in there with some othere Indians Francisco Lubo went in with me. Leonicio Lugo was in there. Stanley was sitting down. Ignacio *Coasta* was interpreting for the Indians, I don't know. I did not hear Leonicio Lubo tell him to interpret. I did

not say anything myself. I did not hear anybody say anything from the time I went in, until the time I went out, I did not say a word. I did hear anybody else say anything that I could understand. I understand the Coahuilla language, but nobody talk-.

After the usual admonition to the Jury the Court adjourned until March 12th, 1913 at 10:30 A. M. March 12th, 1913, Defendants in Court, Jury present, Cross-Examination resumed
295 through Interpreter.

Cross-examination.

By Mr. Robinson:

I was working at Bradford's ranch on May first 1912. I always work there. I was plowing and cutting hay. Mr. Bradford was there on the first of May. *xxxxxx*

Antonio Cont-eras brought into the Court room at the request of Mr. Robinson.

Q. Was that man Antonio Contreras working at Bradford's ranch on May first?

A. No sir, I did not see him. I did not see him there on the first of May. I never saw him before.

Q. You never sa*y* that man before?

A. I saw him at a*d* distance, but I never was close enough to him. I saw him at a distance at his ranch. I never saw him at Bradford's ranch.

The Court: Mr. Contreras may retire now.

When I got to Coahuilla May the first I went to my house, I have a house near the schoolhouse. I got there in the evening I don't know what time it was. I did not go to Juan Co*s*ta's house. I did not see Mr. Stanley that evening. When I got to Coahuilla I went to my house and stayed there. I went to Coahuilla because we had decoration there that day. That is the reason why I went to Coahuilla and stayed at my own house. I did not see Mr. Stanley pass up the road by Bradford's ranch, I was quite a ways from the place on the road.

Exception No. 69.

Q. Didn't Mr. Stanley in the presence of these three men at your house up there at the Coahuilla reservation that night tell you that he could not pay you money that you claim for your son's transportation from the Carlisle School, because he would have
296 to refer to the government and didn't you tell him that he was a liar?

Counsel for defendants objected to the question on the grounds that it is not proper cross examination on the further ground that it is incompetent, irrelevant and immaterial, the proper foundation not having been laid for such a conversation.

The objection was overruled by the Court, to which ruling of the Court counsel for the defendants excepted to at the time.

A. I don't know.

Q. Your boy is — Carlisle School? isn't he?

A. I never say him, I think he sent him from San Jacinto. I slept at my house that night. The sun was already up when I got up in the morning. I had breakfast at my own house. I did not go over to Juan Cotta's house or barn. I did not talk to anybody before I went over to the school room. When I got over to the school building the Indians were all inside. I did not know what was going on over there at the school building. I went over there, because they went over, and I went over to see them.

Q. Where did you sit, when you got in the room?

A. Right in the back end. I just went in to se- them. That is why I went in and sat down. I saw a lot of them in there. I saw Leonicio Lugo and Francisco Lugo, I did not see Ambrosio Apapas there. I saw Pio Lubo there. I did not speak to Pio when I went in. I did not see him when I went in. I mean that Pio was in there when I went in. I did not hear anything that was said all the time that I was there. And I did not say a word myself. While I was sitting in there, I don't know whether any of the Indians acted angry or not. I did not notice. When I went out I saw John Largo shooting at Cornelio, I saw Celso sho-ting. Ambrosio shot Celso once, because he was shooting at him. Celso shot at Ambrosio
297 twice and Ambrosio shot at Celso once. After Ambrosio shot Celso, I did not hear any more shooting.

Exception No. 70.

By Mr. ROBINSON: Where did Ambrosio go after he shot Celso.

—. He was right there, he went out.

Q. Went out where?

A. Outside.

Q. At the front gate?

Question objected to by counsel for defendant upon the ground that it is not proper cross examination.

The COURT: If your objection had been interposed timely I would sustain, but you have allowed the government to go into fully and I will permit him to follow the same line. To which ruling of the court, the counsel for the defendants at the time excepted.

A. He went to the west, to the outside.

By Mr. ROBINSON: You mean he went out of the yard?

A. Yes sir, out of the yard.

Exception No. 71.

—. As Ambrosio went out of the yard, did you see Mr. Stanley?

The question was objected — by counsel for defendant on the ground that it is not proper cross examination. The objection was overruled by the Court, to which ruling of the Court Counsel for defendant at the time excepted.

A. I did not see him.

Q. Show us on the diagram here, on diggram "B." This being

the front porch and this being the west gate, this being the north gate, this being the south gate, and this place in here, being the year, show us where you were standing when Ambrosio went out of the yard.

A. I was standing right there (indicating)

Q. The witness inci-ates on the map that when John Largo
298 came * * * down the front porch he grabbed Cornelio a few feet down the path from the front porch steps, and then the witness says that he himself jumped off the porch and went to the north side of the porch in front of the building, and when Celso Serrano came out the witness crossed over in front of the porch to the place marked with the figure 8. That is correct, is it?

A. When I got to the other side of the porch where I have shown you, I did not see where Ambrosio Apapas was standing, but he was shooting and he was quite a distance from me. I saw him when he fired the shot. Celso was standing at the middle and he was shooting towards the school.

Witness indicates the general situation of the small cross in a larger circle as the place where Celso was standing and the porch as the direction in which he was shooting.

Celso was shooting at Apapas. While Celso was -oing out towards the fountain Ambrosio went out this way. He was going to shoot at Celso again and Charley Arenas ran after him and took his gun away. I saw Mr. Stanley standing on the ground and I did not see him afterwards. I did not see him standing on the ground he was going around, nobody was standing, everybody was moving around. I saw Ambrosio when Charley Arenas took the revolver away from Celso standing here (Indicates a space between a figure 33 and the corner of the building.) After the gun was taken from Ambrosio no one fired shots after that. I didn't see Mr. Stanley after that. After the shooting everybody went, Ambrosio included. I went home to the front gate, while I was standing out there on the ground, nobody threw John Largo down.

Cornelio Lubo, defendant, sworn on behalf of the defendant, testified through Condino Hopkins, as interpreter, as fol-
299 lows:

Direct examination.

By Mr. Estudillo:

My name is Cornelio Lubo, sixty-two years of age, live in Coahuilla, have lived there all of my life. Was there on the 1st of May, last year. On that day we were decorating the cemetery. In the morning we were praying at the chapel. I was at the Fiesta on the night of May 1st. Ambrosio Apapas was not at the fiesta that night. I saw John Largo there who was dancing. He told me during the night that the Agent was there and wanted to see me at 9 o'clock the next morning. The next morning I told the captain about it. On May the 2nd, at 9 o'clock, Juan Costa, Ignacio Costa, the captain and myself went over to the school house, four of us. When we got

to the schoolhouse, I turned back and saw lots of them coming behind us. We stopped in the road, Stanley came out and told us to go into the school building. He said come in and go into the school house. That's what was said by those who understood what he said. I heard Mr. Stanley talking to the captain, he did not talk to me. Ambrosio Apapas was not in the school room. After the people got through there, I went out. No one said anything to me that they wanted to talk to me. I don't understand that map. I did not see John Largo at the door of the school house that morning when I started to go out. No one stopped me at the door or said anything to me. When I came out, John Largo caught me by the neck at this place (Designatsd walk on Diagram B, in front of steps of school house). John Largo was on my back and was trying to
300 throw me back. When I stooped to the front he pulled me back again and again with all my strength I stooped to the front turned a little and he fell over to my side. Then he jumped up, pulled his revolver, and fired twice. As he pulled his revolver, I caught his hand and pushed it away. Charley Arenas caught him right away, here (Indicating.) After that Ambrosio turned the revolver in his hand and took it away from him, and said that he had taken the revolver away from him. I think Francisco Lubo was there but I didn't see him. He was not in the crowd that took the revolver away from John Largo. I did not strike John Largo. We let John Largo lo-se as soon as Ambrosio said that he had taken the revolver away from him.

Cross-examination.

By Mr. ROBINSON:

I am at home all the time. I live about two miles from the school house. On the 1st of May we went down to the chapel, we were having a mass. In the evening we decorated the graves, we brought some flowers to the church and then in the evening we took them to the cemetery. After that I went to Juan Costa's house and had a fiesta. Stayed up all night. I was not dancing all night, I don't know how to dance. I was helping them sing.

Exception No. 72.

Q. Early in the night John Largo came and told you Mr. Stanley wanted to see you, did he not?

A. No sir, in the night.

Q. Did he tell you that Mr. Stanley wanted to see you about moving a fence without permission?

301 The question was objected to by counsel for defendants as not being proper cross examination, the witness not having testified to any fence at all in his direct. The objection was overruled by the court, to which ruling of the court, counsel for defendants then and there excepted.

A. No, sir, he didn't say anything.

Q. Just told you that Mr. Stanley wanted you, is that it?

A. John Largo said that he wanted to see me at 9 oclock the next

morning. I didn't know what he wanted me for. We had breakfast at Juan Costa's house, in the morning. I told Captain Leonicio Lugo before breakfast that Stanley wanted to see me. I told Captain Lugo that Stanley wanted me and I would like to have him to go and see what he wanted me for. The captain told Juan Costa that he didn't know what Stanley wanted Cornelio for and they went over to see. I didn't go over by myself because I don't know English. After I got there I did not find out what Stanley wanted of me. I went over to find out but they didn't say anything.

Exception No. 73.

Q. Well, why didn't you ask Stanley or ask somebody to ask Mr. Stanley what he wanted you for?

The question objected to by counsel for defendants as not proper cross examination and that it calls for an opinion of this witness. The court overruled the objection to which ruling of the court, counsel for defendants then and there excepted.

A. No sir, I couldn't ask him because he wanted me and
302 he had to say *that* what he wanted me for.

Exception No. 74.

By Mr. ROBINSON:

Q. Is it not a fact that what you went over there for with Leonico Lugo was to tell Mr. Stanley that he had nothing to do with and had no authority over you, or any other Indian, except with the consent of your captain, Leonicio Lugo?

The question was objected to by counsel for defendants on the ground that it was not proper cross examination. The objection was overruled by the court, to which ruling of the court, counsel for defendants then and there excepted to.

A. No sir. I took him because I didn't understand the English. I took him to talk *to* me.

Leonicio didn't ask the first question. Mr. Stanley said, What do you want? I think you want something. If you want to talk anything, why, you can ask whatever you want. Leonicio said, They say that you want Cornelio. That is why I came over, to see what you want him for. Then Mr. Stanley said, What authority have you? Yes, I want Cornelio, but I have nothing to do with you, he said. I didn't want you, he said. Then Leonicio said, There is nothing, but I am a captain her,e and I ought to know whatever is going to be before you do anything. Leonicio said, "I am captain." And Stanley said, "You are not captain," and Leonicio said, "I am captain, and I have a right to know whatever is happening before my people." Then Stanley said, "It is not known that you are a captain here, at Washington. Leonicio then said, "They are not
voting at Washington for me to be captain, *his people voted*
303 *there at the* his people there at the reservation voted. Stanley said There is one police here and one forest guard and there is a judge here; you must believe what they say. You must

obey this, and if you don't obey this, why, there is one who will settle everything, Stanley said that. Then Leonicio didn't say anything.

Q. Well, why didn't you stay in the room and get somebody to talk for you instead of going out without talking to Mr. Stanley?

A. If he had said that he wanted me, and for me to stay there I would have stayed.

Q. Well, he said to Leonicio that he wanted you, and you heard him say it, didn't you?

A. Yes, sir, he said he wanted me, but I have nothing to do with you, he said.

Q. You mean you had nothing to do with Stanley?

The INTERPRETER: Stanley had nothing to do with Leonicio Lugo.

Q. Well, after you heard that, why didn't you stay and talk to Mr. Stanley?

A. No; he called me over and if he wanted me he would have talked to me then.

Q. Well, they talked about some government bulls in that room too, didn't they?

A. Nobody said anythin, except Sanchez said that he has got was coming up there to brand the bulls.

Q. Well, the Indians didn't say anything about it at all—about the bulls?

A. Nobody said anything, except Sanchez said that he had got one, and he would turn this bull outside from the pasture, and he can brand him outside, because his cattle are very wild and
304 he didn't like for nobody to chase around in there through his pasture and scare his cattle.

After Sanchez said that, Juanito Casero said that now he is saying to brand the bulls, and if he would brand a horse or calf or anything, who would that horse or calf belong to? I have no bull or anything, but I am just saying this, he said. Stanley said the owner of the brand, it will belong to him. Nothing else was said about the bulls. No one there told Stanley that he would have to take the bulls off the reservation. When I started from the house on my way to the school house and looked back and saw some men there, I stopped and waited for them but did not count them. John Largo came after me. Francisco was not one of the men who joined us on the way to the school house. When I got into the school room I sat on the south side, back of Juan Costa. I did not see Francisco Lubo in the school room. They were back of me, a lot of them, and I didn't see them. I saw Charley Arenas go in but I didn't see where he sat. Pio Lubo was in there but I did not see in what particular place he was. I saw him come in. He came after I did. When I walked down the front step of the school, I was not expecting any trouble. I was not excited. I did not see Ambrosio Apapas in the yard at that time but did see him when they were shooting at us. He did not come out of the school after me. I don't know where he came from, possibly from his house. He was not in the school room. After I threw John Largo over my head,

he jumped up, pulled out his pistol and I caught him by the hand. He had his pistol in the right hand. I caught a hold of his hand before he fired. He was pulling against me and I was push-
305 ing it away from him. He was not shooting at the ground, he was shooting at me up through here, (Indicating). Between my arms and my body. As soon as he fired Ambrosio Apapas caught him. I did not see how many others caught him but I say Charley Arenas and Ambrosio Apapas had him. After Ambrosio got the pistol, he let go of John and we let lo-se of him when Ambrosio said, "I got the revolver." John Largo didn't do anything after that. Directly I heard back of me, some shots fired by Celso. I didn't see Celso firing the shots right away. My hat was on the ground, mashed up, and I was looking for it there. After that I turned and I saw that he was shooting at Ambrosio. Celso fired twice at Ambrosio. I saw him fire both shots.

Q. How could you see him firing the shots when it was behind your back and you were hunting for your hat?

A. First he fired, I did not see that, but when I turned back I saw that he was firing. I heard one shot go off, before I turned around and looked and after that I turned and saw that he was shooting at Ambrosio.

After the usual admonition to the jury, a recess was taken until two p. m.

At two o'clock, p. m., Defendants in court, with counsel.

CORNELIO LUBO recalled.

Cross-examination resumed through interpreter:

By Mr. ROBINSON:

Q. My question is that, when he turned around after that shot he spoke of, where was Francisco standing?

306 A. I didn't see w-ere he was standing because the crowd was going around and too many were around, so I didn't see where he was standing.

Q. About how many were in this crowd going around?

A. I didn't count them because they were shooting.

There were a lot of them. All these that are in here and some of them that are outside. Ambrosio was standing there at the place marked with an A in the circle to the north of the school and approximately on the dimension line where the figures 81 are shown on Diagram B. Celso was standing at a place on Diagram B with a "C" in a circle to the north of the school house. I did not see Mr. Stanley. I heard him talking. When John Largo got me the first time, I heard him talking behind me. I didn't turn around and see Mr. Stanley because I was dodging the revolver. I did not see him at all while the shooting was going on. I saw Celso shooting at Ambrosio twice. Ambrosio fall to one side then get up and fire- at Celso. Celso ran away to the east back of the school house. When Ambrosio fired Charley Arenas ran and caught the revolver from Ambrosio's hand. Charley Arenas then went over to Juan Costa

and handed the revolver to him. Then I went home. I did not see where Ambrosio Apapas went after Charley Arenas took the revolver away from him. After that one shot Ambrosio fired at Celso there was no more shooting, it ended right there. I went out through the gate and went to Costa's house. I did not see Juan Costa carrying the revolver over there.

(United States Exhibit 5 was shown to the witness who identified it as John Largo's revolver.)

307 That is the revolver that Charley Arenas took from Ambrosio, and Juan Costa took from Charley Arenas. I went over to the Judge's house, waited there a while for him to come as I wanted to find out why that policeman wanted to kill me. I spoke to the captain about it. The captain said that Francisco Lubo had told him the same thing, so he said, "I am going to take you fellows to Riverside and let the County do it."

Q. Why didn't you go and speak to Mr. Stanley about that?

A. I did not know him.

Q. Well, you knew he was there, didn't you?

A. He is at Soboba, he is not there.

Q. He was there that morning and there that afternoon when you went down on your way to Riverside, wasn't he?

A. He was there but when they were shooting at us, we went from there.

I didn't take Ambrosio Apapas with me. The captain took him because Ambrosio gave himself up as he had shot Celso and stated that the captain could do whatever he pleased with him.

Recross-examination.

By Mr. ROBINSON:

Q. Was Ambrosio quiet or excited when he said that?

A. He was not excited.

Q. ——.

AGAPITO LUBO, one of the defendants, testified through the interpreter, on behalf of the defendants, as follows:

308 Direct examination.

By Mr. JOHNSTON:

I am a Coahuilla Indian, live on the reservation. I farm, I was at Juan Costa's house on the 1st of May, in the morning. Went there to clean the graves and decorate. Tooks some flowers to the church in a bucket and left them there, after mass I went to the grave yard and left the flowers. I was — Juan Costa's house in the evening, Ambrosio Apapas was not there. I went over to the school house in the morning. I didn't hear Mr. Stanley talking to the Indians through an interpreter. When I got out, had taken two or three steps out, John Largo passed me on the run. Cornelio was ahead of him, he caught Cornelio from behind, throwing both arms around him. Cornelio stooped down and again he stooped down

and John Largo fell over on one side. He got up, I saw the flash of the revolver, I hollered, I told him to stop. John had the revolver, he was shooting at Cornelio. When he was shooting at Cornelio he was between the fence and the school house, just a little ways from the porch there. He was shooting towards the school house. Ambrosio Apapas and Charley Arenas caught him and Ambrosio said, "I got the revolver." I never grabbed hold of John. As soon as I got to where I was they let lo-se of him and I went away. John Largo was not on the ground. They just took the gun away from him and as soon as Ambrosio said, "I got it." they let him lo-se. Francisco Lubo was not in that crowd, he may have been some other place. I never kicked John in the head.

309 Cross-examination.

By Mr. ROBINSON:

When I first saw John Largo running toward Cornelio I was not on the porch but had taken two or three steps on the ground away from the porch. When they were struggling for the gun I was coming on the walk and got there while they were struggling so I went to one side of them. I don't understand the diagram. I don't know where Cornelio was standing but around there some where. (Pointing to the place where there is a circle with a cross in it.) two line- across it in the path on Diagram B). When he caught him, I hollered at them. I told them to stop. He didn't shoot at me. I don't know which way he was shooting but he had his revolver under his arm. The revolver was not pointing at me. He was shooting under Cornelio's arm towards the east. I was standing to the side of these two men, Cornelio and Ambrosio. I did not see Mr. Stanley anywhere there, but there were lots of people and they were saying, "Stop, stop." I did not see Celso coming but I heard the shot. Celso fired at Ambrosio twice. Ambrosio fell to one side the first shot and again Celso fired and Ambrosio dropped again and then Ambrosio fired once at Celso. There was no more shooting after that. When Ambrosio shot at Celso, Celso ran away, and Charley Arenas ran over there and took the revolver away from Ambrosio, and then he handed it over to Juan Costa. After that I hooked up my horses and went home.

Exception No. 75.

310 Q. Have you got a farm of your own.

Question was objected to by counsel for defendant- on the grounds that it is not proper cross examination. The objection was overruled by the court, to which ruling of the court counsel for defendants then and there excepted.

A. I farm at Duarasno. I take care of my horses.

I was at Juan Costa's house at the fiesta. I stayed up all night, had breakfast at Juan Costa's house in the morning. No one asked me to go to the school house that morning.

Redirect examination.

By Mr. ESTUDILLO:

Q. Agapito, are you a healthy or a sick man?

A. Yes sir, I am sick, I have been sick for many years from my eyes, and my knee has been out of order. I can not walk lots of times. When I go to work I always go on horse-back.

Recross-examination.

By Mr. ROBINSON:

I always work. I never go nowheres. Only once or twice a week I come down to the post office to look for mail. Farming is the only way I have to make my living.

FRANCISCO LUBO, another defendant, was called on behalf of the defendants, and testified through the interpreter as follows:

311 My name is Francisco Lubo. I was at Coahuilla on the 2nd of May. Saw John Largo there when he pulled a revolver out. John Largo did not shoot at me. Celso shot at me. He hit me right here in my knee (indicating). (Knee exhibited to the jury). I do not know the name of the doctor at Riverside who doctored me. I did not shoot at Celso. Ambrosio was the one who shot at him. I did not have a revolver that day, I never carry one. I never owned one. I never made an attack on Celso that day. I didn't have anything to make an attack with.

Cross-examination.

By Mr. ROBINSON:

I wasn't doing anything at the school house. I went over with a lot of them. All of them were goin- and I went with them. We did not all walk together or walk over at the same time. They were all scattered around but going in the same direction. I didn't do anything to Celso, I never had any trouble with him. That morning when I saw John Largo I did not know he had a revolver with him. Lots of times when we were together I have seen him have a revolver. He carried it in his belt.

Exception No. 76.

Q. Have you ever been convicted of a felony?

The INTERPRETER: What is that?

Q. Has he ever been put in jail for committing a felony?

The COURT: Do you know where he was put in prison if he was in prison? I am not now commenting on the facts at all.

312 If you name the prison he will probably understand it.

Mr. ROBINSON: I know something about his record but I prefer not to mention it.

The COURT: Well, proceed then.

A. I was never in jail.

COUNSEL FOR DEFENDANT: We ask the court at this time to instruct the jury to disregard the remarks of the district attorney, "I know something about his record but I do not care to speak about it at this time."

The COURT: The jury will disregard any statements of counsel that are not substantiated by the testimony. It is not necessary to give any further caution in regard to it.

Mr. ROBINSON: Of course, your honor, I only did it because your honor asked me a question and I refrain from making any further statements.

The COURT: Yes.

Celso never fired at me only the one shot that hit me in the knee but he fired at Ambrosio twice and missed. When Celso fired at me I was standing about ten or twelve feet from him.

By Mr. ROBINSON:

Q. Now, isn't it a fact, that instead of being ten or twelve feet from you, that Celso was near you and you were running at him and he fired down at the ground and struck you- knee and you were going right to him and he was firing right down at the ground, isn't that a fact?

A. I was standing and he was coming towards me and he fired at me. I held up my hands and fired at me and when he
313 struck me I fell*ed* over like that. I never felt that when it struck me but it pained away up here in my stomach. Ambrosio fired at Celso once, then Celso ran away. Everything was quiet.

SANTOS LUBO, a witness on behalf of defendants, testified through interpreter, as follows:

Direct examination.

By Mr. ESTUDILLO:

My name is Santos Lubo, they call me Sanchez, but that is not my real name. I live at Coahuilla. I was born and raised there. I was there on the first *fof* May last year. We were there cleaning and decorating graves. That evening I was at the fiesta at Juan Costa's house. Apapas was not there, but his wife and daughter were there. On the May 2nd I went over to the school house at half past eight in the morning. On the *day* previous day I had been over to the Catholic chapel for prayer. When I got to the school house there were some people there. I followed them into the building. Mr. Stanley, Ignacio Costa, Capt*ian* Lugo, John Largo and Celso Serrano were there. Celso was there when I got there and John Largo came in afterwards. Cornelio Lubo was in there also. I didn't talk to Mr. Stanley at that time but after while I did. Stanley said that he had authority from the government to brand the bulls and he was coming over to brand them. I told Mr. Stanley that I had one bull in my pasture, that he could

take him out from my pasture and brand him because my cattle were wild. Mr. Stanley said he was going to brand them.

314 Q. Did you offer to take the bull out of your pasture in order that Mr. Stanley might brand him?

A. He said himself that he was going to brand them and if he would say for me to help him, I would help him. But he said he was going to brand him himself. No one there that morning said anything about bulls but myself. I can't tell exactly how long the meeting lasted but we were there quite a while. I went out of the building, saw John Largo go out. I heard John Largo say that Cornelio Lubo had run away. When he said that Stanley said for him to go after Cornelio and bring him in. When John Largo came out of the building, I followed out, he was right ahead of me. I saw John Largo catch Cornelio from behind, Cornelio stopped over to the front and John Largo fell to the side. When John grabbed Cornelio, Cornelio stooped over and John Largo fell over and at that time, he pulled his revolver and fired at Cornelio. At that time I was below the porch where the steps are, I was on the ground. I was standing there. (Witness indicates a place on the diagram south of the steps and near the front end of the building, possibly one quarter of an inch from the line indicating the west end of the building.) Besides John Largo, I saw Cornelio, Ambrosio and Agapito struggling for that revolver. I didn't see any one strike John, but I saw Ambrosio grab his hand and take the revolver away from him. I saw Celso coming on the run down the steps and pull his revolver. Francisco was standing near there. He told Celso to keep quiet and hold his hands up. Celso turned around and shot at Francisco Lubo. Francisco Lubo did

315 not have any revolver. I have known Francisco Lubo for a long time. I never saw him carry a revolver.

Cross-examination.

By Mr. ROBINSON:

I don't speak English very well. My pasture is about ten acres. I saw Ambrosio Apapas at the cemetery, but in the night time I did not see him around. I saw Ambrosio Apapas in the morning when he got the revolver there, that was the first time I saw him there. I did not see him in the school room. I do not know in which direction he came from. I saw Pio Lubo in the school room. I do not know whether he got to the school room before I did or after. I do not know exactly where he was sitting. I saw Pio Lubo there in the school house that morning. He was there when they had the meeting, before the meeting was over. While the talking was going on, he was there.

Q. When you heard John Largo tell Mr. Stanley that Cornelio had run away, that was after John had gone after Cornelio first, was it or wasn't it?

A. John Largo said he went out to Stanley.

Q. That is, John Largo came back from the door and told Mr. Stanley that Cornelio had gone out, isn't that it?

A. I do not think he went out but I think he turned around from the door and went back and told him.

Q. That is, John turned around from the door a-d went back and told Mr. Stanley that Cornelio had gone out and would not come back, is that it?

316 A. Yes sir. He told him that Cornelio went out and Stanley told him to go after him and bring him in. When John took hold of Cornelio I was coming down the steps. John Largo didn't have no gun in his hand but when he grabbed Cornelio and when Cornelio stooped over Largo fell over and pulled his revolver. John pulled his revolver and had it in his right hand. When John shot Cornelio held him like that (illustrating). And while Cornelio was holding him there like that I saw John Largo fire twice. (Witness illustrates how Cornelio held John Largo's hand and John Largo was trying to shoot him. Witness held the hand of the interpreter with a gun pointing in the direction of the ground at an angle of about forty-five degrees.)

By Mr. ROBINSON:

Q. Well, after the shots were fired was when Ambrosio and Agapito went to help Cornelio was it?

A. When he pulled his revolver they rushed and got hold of him and by that time John Largo was shooting at Cornelio. John Largo was on the ground and they were holding him down. Agapito was not on top of John, he was just holding him down trying to take the revolver away from him. When they had John there, Ambrosio got there and took the revolver. There wer- a lot of them around but outside of Agapito and Cornelio and Ambrosio I did not see that others handled John. I was scared and couldn't see any more. There were not five or six of them struggling on the ground, three of them are all I saw. The people were stand-

317 ing right around. All the men that were in the school building. I saw them the first time when they had John down but after that there were so many standing around that I could not see very well. After they took the revolver away from John, they left him alone. Ambrosio took the revolver from him. That happened very quick. I saw Celso running down, Mr. Stanley behind Celso, then I saw Stanley standing below the steps, down on the ground; after that I didn't see him. Celso ran from there around Francisco and fired at him. Francisco did not run up to him. They were pretty close together when Celso shot at Francisco, about ten feet. When Celso fired at Francisco Ambrosio got in front of him. Celso did not go over towards the little fountain in the yard. He went around to the west from where he shot at Francisco. He went down towards the gate to the west. Ambrosio did not follow him but was standing still and when Celso had his revolver in his hand Ambrosio told him to stop, to keep still, not to do anything, and when Ambrosio said these words Celso fired at him twice. But the first fire Ambrosio fell to one side, and the second fire jumped to the other side. When Ambrosio jumped to one side, he pulled his revolver at the same time and Celso ran a little

ways on the side, he turned facing Ambrosio and at that time Ambrosio shot him. Ambrosio did not have his back to the school, he was standing to the side, he was facing north and Celso was facing south. Celso was shooting towards the south. I was standing in the first place there south but when Ambrosio was shooting I ran down here, (indicating about a fifth of the way down the path towards the front gage.) These men were not near the
318 fountain when they were shootng. I don't think Ambrosios was firing right at the gate towards the Catholic church, but a little to the northeast. Celso was shooting towards the southwest Ambrosio fired only one shot. I did not see Ambrosio fire in the direction of the school, he fired once that is all I know. When Ambrosio and Celso were firing at each other to the northeast and the southwest, Stanley was standing there by me, but after that I didn't see him. After Ambrosio fired at Celso the one shot, he went away around the school building to the east, jumped over the fence and went on. After he was shot and ran away, I went to see which way he ran, then Charley Arenas came over and told Apapas to give him that gun, and Apapas gave him the gun. After that I saw Juan Costa come out of the school house, Charley Arenas meet and give him the revolver. There was no more shooting after that one shot at Celso by Apapas. We all went away. I am related to these men. Francisco Agapito, and Charley Arenas are cousins of mine. Leonicio, Ambrosio Apapas are not related to me. Pio and Pablino are my brothers. Patrick Casero is not related to me.

REFUGI APAPAS, a witness on behalf of the defendants, testified through the interpreter, as follows:

Direct examination.

By Mr. ESTUDILLO:

My name is Refugi, I am Ambrosio Ap-pas' wife, live at Coahuilla. I was born and reared there. On the 1st of May
319 last year, I went to the cemetery, to light the candles on the graves. I don't understand what you are saying very well. I know Judge Costa. I was at his house on the night of the first of May, last year. Ambrosio Apapas was not at Juan Costa's house that night. He was at home. He remained at home. He remained at home while I was over at Juan Costa's house.

Cross-examination.

By Mr. ROBINSON:

I stayed all night at Juan Costa's house. After I went to church, I went back to Juan Costa's house. The afternoon I went over to the cemetery. Then I went back to Juan Costa's house from the cemetery. My husband was not at the cemetery that day, and he wasn't at the church. He was at home. After I went to the cemetery, I went home in the morning. I know that my husband was at home because he told me he was going to stay at home.

Redirect examination.

By Mr. ESTUDILLO:

A. Never saw a gun, a revolver, in the possession of my husband before. He never had a revolver at his house. I never saw him carry a revolver. *X*

Recross.

By Mr. ROBINSON:

He never went out hunting.

320 CERVANTES LUBO, one of the defendants, was called on behalf of the defendants, and testified through the interpreter, as follows:

Direct examination.

By Mr. ESTUDILLO:

My names is Cervantes Lubo, I live at Coahuilla, have lived there for years. I am sixty-one years old. I was at Coahuilla on the 2nd of May, last year. I was at the cemetery, the day they were cleaning the graves. That night I was at Juan's Costa's house at the fiesta. Apapas was not at the fiesta at Juan Costa's house. I was there all night. The next morning after the fiesta, I went over to the schoolhouse. I don't know what time in the morning, it was, but the sun was pretty high up. I did not go alone, there were others going there. I went in the school building and sat down. When I got in the building I remember Mr. Stanley was there. No one asked me to go into the school building. John Largo and Cornelio were in the building. Cornelio left the building when the people were leaving. John caught him outside, I mean John Largo. Cornelio kind of stooped down to one side and John fell. John Largo pulled his revolver and was shooting at him but Cornelio caught at his hand. At that time I was standing quite aways away. I did not strike John Largo. I did not see Agapito kick him in the back of the head.

(After the usual admonition to the jury, court adjourned until Thursday, March 13th, 1913.)

321 THURSDAY, *March 13th*, 1913.

Defendants in court with counsel; jury present.

Counsel for defense are allowed to introduce evidence of witness out of order.

ALGER FAST, witness on behalf of defendants testified as follows:

My name is Alger Fast. I reside at Hemet. I am directing manager of the Whittier interests at Hemet. I know a great many of these defendants. I know Captain Lugo, do not know Cervantes Lubo, but have seen him. But the rest of the defendants beginning

with Pio Lubo, Patrick Casero and Pio's brother, and the man next to him have been employed by me in the Lake *Ht* Hemet Water Company's works. Pio Lubo for the last ten years has been employed by me at the Webster Ranch in the alfalfa field until he was brought here to Los Angeles. I have known—I have worked—the defendants since June, 1903. I know the reputations of these defendants for peace and quiet in the community in which they reside. The reputation is good. I do not remember whether on the 1st of May, 1912, I gave Pio Lubo some flowers, but he came to my house and asked for flowers to take to the cemetery and he picked them put them in water and took them away with him and said they were, I believe for Mr. Stanley.

Cross-examination.

By Mr. ROBINSON:

322 Q. You say that Leonicio Lugo's reputation is good in the community in which he lives for peace and quiet?

A. I said the other defendants, beginning with Pio Lubo, and there is five of them there that I have worked and I know what their reputation is.

Q. Which ones are they?

A. Pio, and Pat Casero, the man next, the five beginning right with Pio Lubo and coming this way to the captain.

Q. Pio, Pat, Agapito, Cervantes——

A. No; Pio and Pat, and Pio's brother, the man with the mustache and the man with the gray hair.

Mr. ESTUDILLO: Cornelio?

A. Cornelio.

By Mr. ROBINSON:

Q. The man next to Pat, Paplino?

A. Yes, sir, to the left.

Q. His reputation for peace and quiet is good?

A. As far as I know—as far as I have ever had anything to do with these defendants.

Q. You have not had much to do with Pablino have you?

A. Why, he has worked for me, Pablino has, he has worked for the company on the pay-roll, I know that—all these defendants, off and on, in the fruit season and in the company's work. I give them a piece of land to live on, these Coahuilla's, and they pay the company for water, and that is practically their home in the Hemet Valley, and they come and go, and I have never had any trouble or any complaint in any way, shape or manner, from any of the neighbors. The only complaint we have had was in relation to their dogs in the neighborhood, and I spoke to them about it and they did away with them. Further than that, from my
323 working them and my relations with them in the last ten years, I have never had any complaints in regard to them or any trouble with them.

If any of these men have been arrested for drinking and fighting, it has not been brought to my notice. I cannot state when Pio began

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working for me because we had a great deal of work there and they are hired and work as we need, but that fall up to the 1st of February, 1912, we had a great deal of flume work and pipe work in the company and Pio has been working steadily. From the 1st of February to the 28th of April, I don't know whether he was working for us.

Q. Do you know that he was up in Coahuilla about September previous to that?

A. *There* comings and goings you know, I don't know anything about. Pio's little girls had trachoma of the eyes. I went to the camp with Mr. Stanley along the latter part of January up to this camp and he looked at the eyes of these girls. What I call the reservation is the land I allow the Indians to live on in Hemet Valley. We let them live there because they work for us and they are good workers and we like to have them. They are reliable and they are honest. We have perfect confidence in them. We have them around our stables and handling our tools. Sometimes we need them for two weeks and sometimes two days. This was on a plat of land that they lived on there. Pio's little girls had Trachoma, I don't know whether Mr. Stanley got a doctor for them. He attended to them himself. He told Pio that he would take
324 the matter up with him. What was ever done after that I don't know. I had known Mr. Stanley for five or six years, I suppose. I knew him before he was Indian agent.

Q. Do you mean to say you know the reputation of five of these defendants for peace and quiet in the neighborhoods where they live?

A. I know nothing about the neighborhood where they live. I know that all these defendants—I don't know about Apapas—but I know that at times I have seen them all on that piece of land that we have rented to them. Captain Lugo has never worked for me, but these others have. The rest of the defendants come and go on that piece of land and I have never had any complaints or trouble. I have not been interested in the defense here. I have not been talking to the witnesses in the hall, all through this trial. I have consulted with Senator Estudillo and Mr. Johnstone simply as a business proposition, coming here and giving my evidence and going home, that's all. That is the only matter I have taken up with them. I do not know Leonicio Lugo's reputation for peace and quiet. Neither do I know Ambrosio Apapas' and I don't know Francisco Lubo's.

O. D. Ellis, a witness produced on behalf of defendants, testified as follows:

Direct examination.

Mr. Estudillo:

My name is O. D. Ellis, I reside two miles east of Hemet
325 in Riverside County. I have known Ambrosio Apapas since I have been there, about six years. I know his reputation for peace and quiet as he has worked for me down in the valley. He is down there generally about two months in a year, he and his family. He brings down a bunch to help me in my fruit. I do not

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know Agapito but I know Pio Lubo. His reputation for peace and quiet is considered good.

Cross-examination.

By Mr. ROBINSON:

Q. Who considers it good?

A. All of the people who have had any dealings with Pio there during the fruit season. He worked for my cousin in the fruit season. He generally runs a bunch over there.

Q. Now just give us the names of any people you have ever discussed this matter with, as to whether they consider his reputation for peace and quiet good or not.

A. Well, I don't know as I have discussed that with any one, only I know Pio Lubo there worked for Mr. Carson, and it is good enough so that he likes to have him come back every year and bring his help with him; and the same way with Mr. Apapas there with myself, because they are nice to have around to do the work and you can depend upon them.

Q. They are kind of nice to have around?

A. To do the work, yes sir; that is the idea.

Q. Then Pio doesn't work for Mr. Fast down at this place?

A. Well, I don't know; he may at other times; only during the fruit season, you understand. That only lasts a month and
326 a half or two months a year.

Q. He works those two months of the years up at your place or your cousin's place?

A. No, Pio doesn't; but he works at Carson's as a general rule, yes, for the last three or four seasons.

Q. When is this fruit season you speak of?

A. It is in the apricot time, generally commencing about the first of July and lasting all through July, generally, and then the peaches come in right away after that.

Q. These two men are workers that you dislike very much to lose, are they not?

A. Yes sir. Mr. Apapas, there, last year was at my place just before—I don't know, but just about a week before he was arrested, making arrangements to have the crowd come down again in July to work.

I have seen Apapas at his home and talked with him there. I speak enough Spanish to do business. I spoke to him partly in Spanish and partly in English. That was in September, two years ago. I was on a camping trip and I happened to drive through the Coahuilla Indian Reservation and was there at his place. I have known him five years. He was there in 1911. He was there almost continuously for a couple of months each year. He was never unruly or boisterous. He was a perfect gentleman. He always spoke quietly to me and treated me politely. I never saw him take a drink in my life. He knew his place and kept it. There was
327 nothing unusual or queer about his conduct.

CERVANTES LUBO recalled.

Cross-examination.

By Mr. ROBINSON (through interpreter):

I live at Coahuilla, have lived there all the time, I have cattle and some land there, I raise cattle for a living. My land is west of the schoolhouse, but I do not know how far. I live west of the Parks Place. I think it is a mile or one half of a mile. I went to the cemetery on the 1st of May in the morning when the sun was up, then I went to Juan Costa's house that night, stayed there all night, did not go to sleep. I did not see Ambrosio Apapas at the cemetery that day, nor at the church, and he was not at Juan Costa's house that night. He is about the only Indian that was not at Juan Costa's house that night. I never told any one, or remarked to anybody that Ambrosio was missing from the meeting. Leonicio Lugo was there all night. I did not have breakfast with our captain. I did not go outside after breakfast to talk with the captain. I saw Francisco Lubo, Leonicio Lugo, Agapito, Pio, Pablino, and Cervantes Lubo there, and Pat Casero and Charley Arenas. I don't know what time they started for the school house, the sun was away up when they got started. I am not related to Pio, he did not stay at my house on the 2nd of May. I never saw Mr. Stanley before, I don't know him very well.

Exception No. 77.

328 Q. He is the man sent there by the government to take charge of the Coahuilla Reservation?

Counsel for defendants objected to the question as not proper cross examination and calling for a legal opinion of the witness. Before the court ruled the question was put in another form as follows:

By Mr. ROBINSON:

Q. You understood on the 2nd of May that this man you saw in there was the man sent by the government to take charge of the reservation, did you not?

The question was objected to as not proper cross examination and as calling for a opinion of the witness. The court overruled the objection to which ruling of the court, counsel for defendants, then and there excepted.

A. I never know him.

By Mr. ROBINSON:

Q. Well, he told you it that day, didn't he?
A. He did not tell me anything.

Exception No. 78.

Q. Did you go to a meeting in September before that when the Indians went to the school house and met Mr. Stanley?

Objected to by counsel for defendants as not proper cross examination, as that subject matter was not brought into the direct. The objection was overruled by the court to which ruling of the court, counsel for defendants then and there excepted.

A. I don't remember September.

329 By Mr. ROBINSON:

Q. Well, do you remember of one other meeting in the school house before this when you saw this man, when Captain Leonicio Lugo told him you were waiting for a letter from Washington?

A. Yes sir, I was there that time.

Q. Well, on the 2nd of May you understood from what Mr. Stanley told you at that other meeting that he was sent by the government to take charge of the Coahuilla Reservation, didn't you?

A. Yes sir.

Q. Now, when you first went in the room, what was the first thing that was said in that school room on the 2nd of May?

A. I have heard them, but I don't remember. I did not get it in my mind.

Q. You had a government bull in your pasture that you talked about that morning, didn't you?

A. I haven't any government bull.

Q. Have you got a bull, or did you have one then?

A. No sir, I never had a government bull.

Q. You say that when you got outside Cornelio threw John over to one side, and John got up and fired his gun twice, is that a fact?

A. Yes sir.

Q. You know that Agapito did not kick John Largo in the neck or in the back of the head, do you?

A. No sir, he never kicked him.

Q. You could see them all the time, could you?

A. Yes sir; I was towards the gate there and I saw them at that place there. When Cornelio and John caught themselves, and when the gun fired, Charley Arenas, he was standing there towards
330 me and he turned around and went to them, and then Apapas went, and then they both caught him.

Q. Agapito was holding him down on the ground while they were trying to get the gun away from —, wasn't he?

A. No sir, he was not on the ground. He was standing when they caught him.

Q. Agapito did not put his hands on him?

A. When they were standing he caught him, yes.

Q. Agapito did?

A. Yes sir.

Q. Show us on the interpreter here how Agapito caught hold of John.

A. Agapito was standing here holding.

Q. Hold onto this man the way Agapito held onto John.

A. Like that he was holding (indicating on the interpreter).

Q. Take your seat. Now, the man who was holding onto John that way is this man here, Agapito Lubo, is it?

A. Yes sir, he is the one. While these men were trying to take the gun away from John, I saw Mr. Stanley right below the steps going down the steps below on the ground at the corner to one side. I was quite a ways from him to the west towards the fence. The men who were struggling for the gun were not right between the school house steps and the fence. There were struggling near to the school house. When the fight was going on Mr. Stanley came out from the school house building, walking around there, quietly walking around. I saw Celso before I saw Mr. Stanley. Celso jumped to one side from the porch, ran to one side, and when
331 Francisco told him to stop, he fired at Francisco. Then Ambrosio told Celso to stop and he fired at Ambrosio twice. I didn't see Mr. Stanley after that. When Ambrosio was dodging to one side and the other, I didn't see where Mr. Stanley was. (Diagram B, explained to the witness by Mr. Robinson.) Celso jumped from here and he stopped right there (indicating the place marked with two lines crossing the dimension line that leads out to the fountain). Ambrosio was standing there (indicating a place two diagonal lines running parallel across the square). When Ambrosio fired that shot at Celso, Celso didn't do anything, he ran away. Ambrosio turned around and Charley Arenas met and took the revolver.

Q. Now, when Ambrosio turned around, did'nt he walk over to the front of the school steps and shoot Mr. Stanley in the back?

A. No sir. There were no more shots fired after Celso was struck. I was there all the time when the shooting was going on. Ambrosio only fired one shot that morning. Ambrosio did not run after Celso and yell at him.

Q. He just jumped twice out of the way and fired one shot at Celso, is that it?

A. No, Celso was shooting at Ambrosio. He was dodging down and when he jumped up, Celso was going to shoot him again. Ambrosio shot him and Celso ran away.

Q. And then when Charley Arenas went up to Ambrosio, Ambrosio handed the gun to him quietly, did he?

332 A. Yes sir, he gave it to him quietly.

CALISTO TORTES, a witness on behalf of defendants, testified as follows:

My name is Calisto Tortes, live at Santa Rosa, which is 16 miles from Coahuilla. I know the Coahuilla Reservation. I was there on the 1st of May, last year. We always come there on that day to decorate the graves. I was there on the 1st of May, also on the 2nd of May. We decorated the graves on the 1st of May. I was at the fiesta at Juan Costa's house on the night of the 1st of May. I did not see Apapas there. I am not a Coahuilla Indian, I belong to the Santa Rosa tribe. The day following the decoration of the graves, I was over to the school building. I saw Cornelio Lubo there. I didn't see whether he went with them, they all rushed together there and I didn't pay any attention to who they were. I

saw John Largo run out of the building. Cornelio left the building before John Largo. I did not leave the building, I remained inside. I didn't see what happened outside. John Largo first went out, Mr. Stanley told him to call Cornelio back, John Largo returned and said Cornelio had gone away and then Mr. Stanley said, "Go and bring him in." So John Largo went back. Then I heard a shot, Stevens and Pederson both went out, Pederson came back and said to Stanley, "Send some body to help," Stanley told Celso to help. Celso ran out then. I did not go out myself.

Cross-examination.

By Mr. ROBINSON:

333 I stayed in the school building right along after that. I stayed there just a few minutes. I was not well acquainted with Mr. Stanley.

Exception No. 79.

Q. Well, he was superintendent of the Santa Rosa Indians, was he not?

Objected to by counsel for defendants as not proper cross examination. The objection was overruled by the court, to which ruling of the court counsel for defendants then and there excepted.

A. Yes sir.

By Mr. ROBINSON:

Q. You knew the man in the room there very well, didn't you? And talked with him as a friend—Mr. Stanley?

A. I knew Mr. Stanley was there. I did not talk to Mr. Stanley when I was in the room. I was sitting in the second seat in the last row on the right hand side, as you go in. Domingo Costa was sitting with me. I heard shots outside, I cannot tell how many. I did not count them. There was too much excitement going on then, and I didn't pay attention to how many shots there was, but I heard several shots.

Q. Well, there was no excitement in the school room was there?

A. Well, it was right in the door. Mr. Stanley ran to the door. After Stanley went out, I got out, met him right by the door. I saw him going into the school room. I stepped on the right side. I did not hear him say, "My God." Both Pederson and Stevens went before Mr. Stanley.

334 Q. And the moment — got there, Stanley turned around and you heard a shot, didn't you? Just the minute Stanley turned around there was a shot from the gun, was ther- not?

A. No sir, I didn't see that. Stevens and Pederson went right past by me, running fast, I thought Stanley was going fast. He was not running but he was going fast by me. I stepped into the hall way and he passed by me. Then I went out and everything was over. I did not see Ambrosio Apapas coming in as I went out. I didn't see anybody else go into the school room after Stanley, Stev-

ens and Pederson went back there. Yes, my eyes were open. I went out but everything was all over then.

Q. When you went up from Santa Rosa, you knew that the Coahuilla Indians were planning to drive Stanley off of the reservation, didn't you?

A. No sir, I didn't know anything. We just always go there when he have decoration day there the first of May.

Q. Didn't you stay in the school room, so that you would not see what was going to be done outside on the front porch?

A. No. I go out there, I was always scared to go out.

Exception No. 80.

Q. Well, why were you scared if you didn't think anything was going to happen? If you didn't know that they were going to kill Stanley or drive him off the reservation, why didn't you
335 leave that school. Why were you scared to go out?

The question was objected to by counsel for defendants on the ground that it is not proper cross-examination. The objection was overruled by the court, to which ruling of the court, the counsel for defendants, then and there excepted.

A. There was so many shooting there, and I didn't want to go out. When the other Indians went out it was too crowded. The door was kind of block- and all of them going out and I had to stay back there. I heard Stanley tell John Largo to get Cornelio and bring him back. There was no trouble outside then. Other people were getting out, I was not scared to go out then, I didn't go out because I wanted to stay back there, and there was a crowd around the door there.

Exception No. 81.

Q. Didn't you know when you went into that school room, from conversations you had with Leonicio Lugo, that it was planned that you being a stranger, and Juan Costa, the judge, and Juanito Casero should stay inside of the school room and not see what happened and that Leonicio Lugo should get outside the gate so he would not see anything that happened?

Question objected to by counsel for defendants as incompetent, irrelevant and immaterial, as not proper cross-examination; that it assumes a state of facts not presented here in evidence. The objection was overruled by the court, to which ruling of the court, the counsel for defendants then and there excepted.

336 The last question was read by the reporter and repeated by Mr. Robinson.

Q. You knew that was the plan from what Leonicio told you, didn't you?

A. No sir. I was still in the room when Stevens returned and told Stanley he had better send somebody to help John out. I did not see him standing between the desks there and look out the door onto the ground. I didn't see Stevens look out the door and turn and tell Stanley he had better send somebody to help John out.

Stevens went back and told Stanley to send somebody out there. I didn't go out then because I was afraid to go out. There had been no shooting up to that time. It was after Stevens told Stanley to send somebody to help John that I heard the shots, then Stanley sent Celso Serrano out. While I — inside there I was afraid. I couldn't go there were to- many people leaving the room through the door. Stevens did not go clear out but from the first door in the school room, he turned back. I didn't go out then because I was afraid.

CHARLES H. THOMAS, a witness on behalf of the defendants, testified as follows:

My name is Charles H. Thomas, have lived in California 62 years. Have lived in the eastern part of Riverside county where the Coahuilla reservation is located, within 8 miles of it. I am the Charley Thomas of the Thomas Ranch. I guess I know all of the defendants. I have known them since 1861. I lived there forty-
337 six years. I know the reputation of these defendants for peace and quiet. Their reputation is good. My answer covers Captain Lugo's reputation for peace and quiet. Their reputation was good, there was no fighting or quarreling of any kind while I lived there.

Cross-examination.

By Mr. ROBINSON:

I do not have business with the Indians. I do not buy and sell cattle to or from them. I have hired them to work for me but I never bought or sold cattle to them except when I bought the ranch there, the right of good will.

Q. That is when you bought the ranch you gave the Indians some cattle so they would not disturb you, is that it?

A. Partly that, and partly I consider they had a right to that land. Everyone of those Indians have land that they call their-. It belongs to everyone of them that lived on the reservation.

Q. Do you considere that they owned, it, and not the United States government, is that it?

A. Well, of course, I know I got no government title from them, but they claimed it and I bought it and paid them for it, and, of course, I got their good will by doing it.

Q. You kept their good will by other transaction- you have had with them since, haven't you?

A. No. I have not bought or sold any cattle or anything that way. They sold their cattle to butchers and I bought one cow from
338 one Indian, that is the only cattle that I ever bought from them. I haven't had any business with them.

Q. Isn't it a fact, Mr. Thomas, that in their little Indian court, you have acted as attorney for Indians in their disputes on that reservation.

A. Well, I advised them.

Q. And you have tried the cases before the Indian Court of Offenses, haven't you, the court of Indian offenses?

A. No, I did not try them, I advised them about things, advised them how to go at it. I appeared as a witness before Judge Rudkin in this court on a writ of habeas corpus and said that my acquaintance with the Indians included being attorney for them in their court, you would not call that attorney, for what it was—there was a suit there one time that I advised them about it, they got me to settle it for them. The Indians got me to—Manuel Largo, the head chief. I have known Leonicio Lugo since they lived on the ranch called the "hog ranch." He and his father had some cattle there together. They were living there seven years ago when I left the ranch. Seven years ago he did not make his home in Redlands, he may have gone there to work, which they all do. I have not been on Leonicio Lugo's place during the last few years, but I have met him here and there in Hemet and other places. I think in Redlands, too. I do not go over and mingle with the Indians at their fiestas. I never heard of them having any fights at those fiestas. I only remember
339 one big fiesta, about forty years ago. *They* were fifteen hundred Indians gathered for a regular feast. There was no fighting there, only a sham battle. You ask me if I had ever attended one of their fiestas, that is the only one I ever did attend. Since I left there I don't know where Leonicio Lugo has been living. I have met him at different places. I left there six years ago last October. Have not been at Coahuilla in six years.

IGNACIO COSTA, a witness produced on behalf of defendants, testified as follows:

Direct examination.

By Mr. ESTUDILLO:

My name is Ignacio Costa. Was born and raised and live at Coahuilla. I was there on the first of May, 1912. *They* were religious ceremonies by the people on that day. They had a meeting over there, they generally have it every year, a kind of a religious service. They call it Memorial Day. They hold services for the honor of the dead. Decoration day, they call it. Just as the white fellows do on the 30th of May, when they hold Decoration day services you know. It was that same sort of thing that they had over there that day. I went over to the Catholic Chapel, in the evening I was over at Juan Costa's house. I lived there with Juan and that evening the*y* first of May, people generally have that, they always come together and hold those services. On that day all the people came there for that special purpose. On May 2nd, I went over to the school house. I was at the barn, Captain Leonicio Lugo
340 came down to me, and said that he was going over to the school house, that Cornelio had told him during the night that John Largo had been there during the night, and told him that Stanley wanted him in the morning. Of course, Cornelio didn't know he couldn't talk for himself, and I guess he asked Captain Lugo to go along with him in the morning. So the Captain came up to me that morning and asked me if I could go along that he might

want to talk to Stanley himself, that I could interpret for him. I said it was all right and went along, that is I did not go right along, the captain started off and I stayed there a little longer, and afterwards I went along. We went in the school house. Nobody was there at that time, we went in first and then Stanley and Pederson came in and those other fellows. I was their interpreter. Stanley asked Captain Lugo if he had anybody to interpret for him. The Captain said yes and mentioned my name as the interpreter. Stanley said it was all right. Then he took a chair towards the front and set it over there and called me over and I sat down on the chair. The first question Stanley told me to ask the captain was what he wanted to talk about. The captain said, "Well, I haven't got very much to say, only I came with Cornelio, you told Cornelio to come up here this morning at 9 o'clock. Cornelio told me he was coming so I had to come. Stanley said, "No, when I wanted Cornelio, I wanted him alone. I do not want you at all, you are not anything, you are not an officer of any kind at all. I do not recognize you as an officer neither does the department at Washington recognize you as such." Then the captain says, "That might be so; I am
341 here as a captain representing the people, my tribe here. And it is my duty to see that the people maintain order and peace. It is my duty to over-see that and if at any time any stranger, or any other officer comes in here, it is my duty to talk to him. Then Stanley said, to the captain, "I haven't anything to do with that, when I wanted Cornelio, I didn't want you, that is my affair, none of yours." Then he told me to tell Cornelio that he was surprised that a man like him, like Captain Leonicio, who pretends to be a well educated man, *to* resist the government rules. Leonicio Lugo replied to that, "No, I am not resisting the government, I am only here—I come here with Cornelio to hear what he had to say." Then Mr. Stanley at that time took up a rule book of some kind, I guess it is on the forest reserve, or something of that kind, I guess he was going to read that, and before he got to read*y* the book, he said, "If there is any question that the people would like to ask, I am here to explain to them what the*y* rules are." He said that twice. Juan Costa was there at that time, and told me to ask Mr. Stanley, or rather to tell him, that there were no forests there that would need a guard, that what little wood there is here, we need all of it, every day. We are using it for posts or for wood, but there is no large timber here. Mr. Stanley replied to that, "I know there is no such timber but it is best to have a forest ranger, because lots of times when a fire breaks out here it is best to have a guard so as to check the fire from spreading out." Juan Costa did not say to Mr. Stanley that he did not want Celso as forest guard. What he said was this, "Lots of time- when they appoint a young man, officer like that, they want to over do their duties. Mr. Stanley then said,
342 "No, Celso, being appointed forest guard, police and judge, he would not do any such things, unless he first obtained my authority to do so." Then Juan said, "Lots of times young fellows like that want to do things too much for themselves." After that when he got through with that*h*, Stanley said he was coming over

purposely to brand the bulls. He said he had just received authority from Washington, and that he was going over there to brand the bulls in the morning. Captain Lugo did not say anything about branding bulls. Among the Coahuillas present, the one that spoke about branding the bulls, was Santos. He told me to ask Mr. Stanley if it was so that he was coming to brand the bulls. I interpreted that to Mr. Stanley. Mr. Stanley said that he was going to brand them in the morning. Juanito Casero didn't say anything about branding the bulls, only that he had a bull of his own and he had cattle of his own and didn't think it was necessary to brand them. He didn't need any government brand on them. Santos Lubo said I have one of those bull- and he is kind of wild and my cattle are kind of wild and it will do for him to get the bull a little ways you know, at some convenient place, and brand him there. I didn't hear Pio Lubo say anything about pulling Mr. Stanley out by the hair. I didn't hear anyone there say anything like that. I was not interpreting for the people at all, I was interpreting for the captain and what Mr. Stanley had to say to the captain. I was interpreting for both of them. I also interpreted for the other people that were there. John Largo and Celso were there. Pablino Lubo didn't say anything. It didn't seem like anybody was angry at all there.

343 After the people go through the captain said that he didn't have any more to say to him, so he got up and went out and all the people followed. Just before he went out he said he knew Celso had been appointed and he asked Celso whether he had the paper from Washington. Celso replied that he had and Mr. Stanley walked over there to Celso, got the paper and brought it to him and wanted me to read it, so I could explain it to the people after I got through, but just when he turned and gave me the paper, everybody was out. I didn't get to read the paper at all. Those that sat in the back seats went out first and the others followed. The- walked out and did not run out at all. When they started to walk out, Mr. Stanley hollered to Cornelio who was already out, then he told John to go after him and bring him in. John went out and pretty soon he came back again and peeped in through the door, and said, "Cornelio has gone, run away." Mr. Stanley said, "You go and bring him in here and Celso you go and help him." John went out in a rush, Celso followed, also Stevens, and just when he was going out, I heard one report of the gun. The report was just as Celso had gone out. I heard one shot before Celso went out of the building and after that those who were left in the building rushed out. I didn't hear any more. I was at Coahuilla at the time the defendants were arrested. It was July 10th. Apapas and Francisco had been taken before, they had not been hiding at all, they were at brother Juan's house that morning. We had been over to Soboba to see Mr. Hall and he told us that he would be up there Wednesday, July 10th. The captain notified the people to be there to wait for

Mr. Hall, that he was coming over there to talk to the people

344 and we were all there at Juan Costa's house when the United States Marshal came in and arrested those fellows. I didn't notice Apapas at the school house on the morning of May 2nd. I

don't think he was at the fiesta the night before, I did not see him there. His wife and daughter were at the fiesta.

Cross-examination.

By Mr. ROBINSON:

I was sitting in the front at that meeting. I did not notice Ambrosio Apapas. There were a lot of people there and I didn't notice who all were there. Juanito Casero was there and I know Santos Lubo was there because he was talking to me. I guess Cervantes Lubo was there but I don't know which part of the house he was in. I guess Pio Lubo was there but I don't know which part of the house he was. Pablino Lubo was there. He didn't say anything in the meeting. Santos Lubo, Leonicio Lugo, and Juan Costa and myself were the only Indians that talked. The rest might have talked but I didn't pay much attention to them. I did not notice them very much, I was interpreting for the captain. The captain did not tell me why he wanted me to interpret for him. He knows a little English but I couldn't say that he speaks pretty good. I do not stay at the reservation all the time, some times I am away from the reservation but most of the time I am there. I have not traveled around with the captain, around other reservations. Never traveled with him anywhere. Ambrosio Apapas was not at Juan Costa's house that night. I saw Ambrosio Apapas the first time that day when he came up from the house after the trouble and
345 when they were going to take him to Riverside. I sat in the room after Mr. Stanley went out on the porch for a little while, while I was sitting in there Pederson and Stevens rushed in followed by Stanley to the door at the back where it goes to the kitchen part of it. They ran right through the room and slam-ed the door right after them. Mr. Stanley followed them. He came up there just a little ways from where that stove is and said, "Oh, I am hurt," holding his stomach that way.

Q. And he fell over a desk, did he?

A. No, he did not fall at all; just stopped there. He says, I am hurt, and walked right after those fellows went in—walked to the door and tried to open it, but those fellows as they go in, I guess they hold the door by the knob on the other side, and so he did not open it, and he turned right back to the desk and stopped, and said, Oh, I am hurt, and kind of kneeled down, and as he walked away he did not get to the door, and at the time I got up he was just about falling and I got hold of him—I caught hold of him and braced him up, and he pulled his suspenders off and said to pull his shirt tail off, but I was holding him, and he says: "Where am I hurt?" And so I pulled his shirt tail off, and I took his hand and put his finger in the wound back there. "Where is the wound?" he says, and I put his finger in the place, so we just put his suspenders on, did not think nothing about his breeches at all, and he started for the door, and I went and opened the door for him and took him out through that dining hall—I mean kitchen. I went out through the other

door into the kitchen and went out that way, on the east side.
346 I remember Mr. Stevens, Mr. Pederson, Ben Decravr-
cour a day or two after Mr. Stanley was shot being at the reservation. John Largo came and told me that those men were there and wanted to see me. When I got there I saw Mr. Thackery, I did not know him at the time, and those other fellows. When I got there he shook hands with me and I shook with him. He asked me where Apapas shot Stanley. I told him I didn't know. I did not see him shoot Stanley. I did not show them how the bullet got in the wall. Pederson and Thackery told me that they found the bullet in there and they asked me who shot in there and I said that I didn't know who shot in there. I did not walk up to a place near the stove and show them how the bullet went in the wall from that place.

By Mr. ROBINSON:

Q. Just to refresh your recollection do you remember sitting down in a chair where you showed them where you say when you were interpreting?

A. Yes.

Q. And pointing how the bullets would have gone from the place where the gun was fired to the wall, and they told you that if that had been so, the bullet would have gone right through your head, do you remember that?

A. Yes I remember that. I was sitting there—I was going to say, I was sitting there on the chair, and those fellows, Pederson and Stevens, the- said — they went around me this side. I was sitting there right close to the desk you know, and that was the only place—only just a little place for them to go through. They claimed that they went back of me. I said: "No, you did not go back of me at all, you went right straight on this side, on the right-hand side of me," I said. At that time I got up and
347 says: "If Ambrosio was in here and shot from here, why, he could have shot me right in the head, or anywheres around here, I says, then. I didn't say that he was anywhere at all. Thackery asked me if he was in there, and I said No, I did not see him in there. He said what kind of a gun did he have, I said I didn't know, I did not see the gun he had. He said what calibre is it he had, I says I don't —. I did not take the gun to see what calibre he had. I did not see Ambrosio Apapas at the time of the shooting while I was in the room and before Mr. Stanley went out the back door go through that school building from the front door to the back door and go out the back door. He did not go through the school room. I did not see, that's what I told Thackery over there that I did not see him, but they wanted me to say that Ambrosio did shoot Stanley over there and I said I didn't know. If he did I did not see him. The only thing I heard was when these fellows went back through the back door, they slammed the door. The only thing I heard was the sound of the slamming of the door. I told Thackery that. I heard a shot outside just as Pederson and Stevens came back into the school and right after that shot Mr.

Stanley came off the porch into the school building, he followied right after those fellows. I could not see where Mr. Stanley was standing on the front porch, I couldn't say that I saw him standing outside at all. I did not see Pederson and Stevens standing in the door way. While the shooting was going on, I was just sitting there. It was all in a rush, you know, all excitement. I did not get up because I could not get up to go out. I did not look out the door. I had that paper that I was going to read there. I did
348 not look outside at all. I was sitting right there, facing this way, (marked with a letter "E" in diagram A.) towards the northwest. Leonicio Lugo was sitting close to me. I don't remember whether it was in the front seat. Sitting where I was, when the shooting was going on, I could not look out the door and see the people on the front porch. I could not see outside the door. I didn't look, I didn't know who was there, or who had gone away. Sitting in the middle of the room, looking out towards the door, I did not see anybody in the doorway. Leonicio Lugo told me that Cornelio Lubo had told him during the night that John Largo had asked him to come over and see Mr. Stanley. He told me that just before breakfast at Juan's house. I was down to the barn and a few of the boys there that morning. Leonicio didn't tell me that morning what he thought the trouble might be or what Mr. Stanley might want. He did not say that at all. He just asked me if I would go along as he might need me to interpret for him. That is all he said to me. He did not say that there might be some trouble, he did not say that at all. I did not walk over with Leonicio. Cornelio and Juan were with Leonicio when they started for the school. I came behind them. I did not see how many others were coming over but when we got there, we saw some men there already, two or three standing there in the corner back of the school. I think Captain Leonicio, Juan and I went first. All the men who came in that morning had been over at Juan's house the night before, had stayed there all night. Not all of them that went into the school house came over from Juan's house that morning. After they had breakfast, of course, there was nothing for them to stay for,
349 and they scattered.

Q. I mean all the men who did go over to the school house, except Celso Serrano and John Largo and Dolph Lubo had walked over from Juan Costa's barn, hadn't they?

A. Well, I think they did, I did not notice them. I did not notice where they walked from. I followed behind them about six yards, I guess. It was Juan that said that there was no need for a forest guard after Stanley asked if there was any question they wanted to ask him. Juanito Casero did not say what are you going to do with the horses, and calves and cows if you brand the bulls. What he did say was that he had his own cattle and his own horses and had his own brand that he branded them with. He didn't say anything about the calves. Stanley didn't say anything about the calves. While they were talking about branding the bulls, Leonicio Lugo didn't say anything. Santos was the one that asked me to ask Stanley if he was coming to brand the bulls but Leonicio did not say

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anything. When the Indians went out of the room nobody was there with me, probably Juan Costa was there, but I did not notice him. I did not see Calisto Tortes there. I did not see him in the room at all. I did not see a boy named Domingo there. He is nephew of mine, Juan's son, he was not in the room. I was there all alone. When John Largo went out of the room I only heard one shot, of course. I did not hear from the noise the people were making. I could not hear in the house any shots above the noise the people were making. You cannot hear very much in that house, the wall is double thickness and it has got as good coat of
350 plaster on. I did not notice that both doors were open. I did not notice that they were open or closed. When Mr. Stanley came in, the doors were open. I am not sure that there were two shots when Celso went out, I heard just one shot. I did not hear the other shots at all. I did not hear any of the yipping war cry of the Indians. I did not hear them yelling. I couldn't say how many shots I heard altogether that morning because I didn't hear the rest. You know I only said that I heard one, but of course I couldn't say about the others. When Mr. Stevens Mr. Pederson Ben Decrevecour and Mr. Thackeray were up ther- about May the 4th, I did not show them a place near the stove in the school room and say that that was the place to which Ambrosio Apapas ran when he was following Stevens and Pederson. I did not at that time while one of them held a small stick in the hole in the wall, the bullet hole in the blackboard, tell them that from a place near the stove Ambrosio Apapas had fired one shot in the direction of the rear door of the school room. I have not both legs, am a cripple.

351 CHARLES ARENAS, one of the defendants, testified on behalf of defendants, through Condino Hopkins, as follows:

Direct examination.

By Mr. ESTUDILLO:

My name is Charley Arenas. I don't know how old I am. I live at Coahuilla, have always lived there. I was arrested at Coahuilla, I don't know just when. I was at a celebration on the 1st of May, 1912. We had mass at 9 o'clock on the 1st of May, then in the afternoon we went over to the cemetery and cleaned the graves and decorated them. After that in the evening we went over to Juan Costa's house, they were *h* having a fiesta there that night, according to the old custom that we used to have. I live about four miles from Juan Costa's house. The next morning after breakfast at Juan Costa's house, when the sun was up, I saw some people going over to the school house and I went over entered the school house and sat down, right there. (Witness pointes to last seat second row, north side of building.) After the meeting was over, I went out. I did not do any talking while I was in there. I saw John Largo in the school building. After I went out and was about twenty feet from the school building, I heard a shot, turned around and saw John Largo and Cornelio. I ran to them and caught John Largo by the hand. I saw that Cornelio had hold of John Largo. John

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Largo had the revolver but when I heard Ambrosio say, "I got the revolver," I let him lo-se, and Cornelio and I turned around and came back. After holding John Largo and letting him go, I did not go towards the gate between the school house and the
352 teacher's house. I didn't go in that direction. I turned around and Celso was coming from there. He jumped to one side and shot at Francisco. Francisco did not do anything when Celso shot at him nor just before he shot at him. Francisco fell down and I did not see him after that. Celso then turned around, shot at Ambrosio twice, ran a little ways and when Ambrosio got up he pointed at Celso *n*and fired at him. I ran to Ambrosio and caught h.m, got the revolver, came back and gave it to Juan Costa. Right there it was all over and I went home. Agapito was there and helped to take the gun away from John Largo. Agapito did not kick John Largo, Largo was nŏt on the ground.

Cross-examination.

By Mr. ROBINSON:

I said that I saw some people going over to the school house. They were the same people that had been at Juan Costa's house that morning. I don't know how many were going over there. I did not count them but I saw a lot of them. I followe- behind I don't know the names of those who were ahead, I know Juan Costa- Leonicio Lugo Cornelio and Ignacio Costa were ahead of me. The- stopped in front of the school house and after a while they went in. Leonicio did not go to the front of Seven's house, he went into the school huse. I heard Ignacio talking to the Captain but I did not understand what they were saying. They were talking in the C-a-huilla tongue, but I was quite a way from them and I couldn't hear them. I went in to see and to hear what I could hear, but did *mlt* hear anything. I went out, because the others went out. I can't hear very well, because this side of my head *and* is a little closed and this side is a litt*l* close- and I have been sick. When I got out-
353 side of the street scho*l* building and saw John Largo struggling I was at the place where the fig. "4" is in the walk. I heard a shot turne*g* around and saw John Largo and Cornelio struggling*t* there. (Indicates a place between the letter "L" and the steps on the porch on the diagram "B.") I walked back to them and took the revolver from Cronelio's hand. I did not know where Apapas was, but when I got there I heard him say "I took it away from him."

Q. Before you saw Ambrosio on that spot where Cronelio was you had nŏt seen him for 2 days, had you?

A. No sir, I never saw him before. I did not see him inside the building until I was there at the spot and he says he took the revolver. I did not see him on the *frist* of May, but on the second in the morning I saw him there. When Ambrosio Apapas appeared alongside of Cornelio he was not yelling. I was walking toward the ga-e west, when I heard the shots and turned around I did not expect or know anything of trouble at that time. I was not excited.

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I did not see Apapas when he passed, until that struggle there. When Appapas got the revolver he simply said, "I got it" and I let him lo-se. Apapas did no- rush at Celso but Celso came down running toward the fountain, turned around and fired at Francisco from there. Celso was right near the fountain when he fired at Francisco. Ambrosio was at Fig. 33 on diagram "B" when Celso fired at him. I don't know how Ambrosio got from the place in the path where he took that gun over to the place where he was shot at by Celso. I did not see how he wen- there. But I saw him when he was saying to Celso *and* stop and Celso was shooting at him. From here I run over her- and took the revolver from Ambrosio (Indicating that Ambrosio was stan*ind* on the place marked by the fig. 33 on Diagram "B.") Witness identifies United States Ex-
354 hibit 5 as the revolver he took from Apapas. I do not know whether the revolver was loaded, I did not pay any attention to it. I did not take any of the loads out of it, why should I? I gave it *at* Juan Costa exactly the way I got it then I went home. I saw Ambro*iso* walk out the school yard. He walked out quietly. He looked just the same as he alw*yas* looked. There was nothing queer about his actions. I can't tell whether he was mad or not.

JUAN COSTA, a witness produced on behalf of the def*ue*dants testified as follows, through Condino Hopkins, acting as interpreter.

My name is Juan Costa. I live at Cuahuilla. I am Judge over there. I was there on the first of May last year. We had a memorial decoration of the graves. Apapas was not at my house on May *frist* 1912. His wife and daughter were there. I went over to the scho*l* house with Capt. Leonicio Lugo, Ignacio Costa, Cornelio Lubo. We went in the school building. I heard a conversation between Mr. Stanley and Ignacio Costa. Mr. Stanley told Ignacio to ask Leonicio Lugo what he wanted to talk to him about. Lugo replied that Cornelio told him that night that Stanley wanted him. Stanley said to him that he had nothing to say to Leonicio Lugo. Leonicio replied *replied* that he was there as an officer he must know and find out about it. Leonicio Lugo did not say anything to Mr. Stanley about the branding of bulls or calves. Juanito Casero did not say anything. Cornelio Lubo did not say anything. Neither did Pablino or Pio. I did not see John Largo leave the building. After the trouble I did not see Apapas. I saw Charlie Arenas. He gave me a revolver. I brought it down to Riverside. Capt. Leonicio came with me to Riverside. I brought Ambrosio and Francisco Lubo to Riverside. I saw Francisco Lubo's leg it was wounded at the knee. I turned Apapas over to the sheriff of Riverside County, also
355 the revolver. While the talk was going on at the scho*l* house nobody was angry. While I was in the school house I heard shots outside.

Cross-examination.

By Mr. ROBINSON:

I was inside when I heard the shots, sitting right in front. Ignacio and Gabe Costa are my brothers. Ignacio Costa was sitting

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about 7 or 8 feet from — while the firing was going on. I did not see John Largo come back until Mr. Stanley — that Cornelio would not come back in the room. I did not see Celso go after John Largo. That is out of the room. I was sitting in the room, I was not talking to anybody, I did not know that there was something doing outside. After Mr. Stanley went out of the room Ignacio was there with me. I did not see anybody back of me. When I heard the shots I went out. Met Mr. Stanley in the door way, coming into the school house. I did not see Stevens or Pederson ahead of him. I was sitting in one of the two seats nearest to the stove. The front seat in the first row to the right going in the school room. When Mr. Stanley passed me I was coming right in so I turned to my right as he went through the small entrance way, that is the vestibule room, between the inner and the outer door. Pederson, Stevens did not pass me when I cam- down this aisle. I did not see Callisto Tortes while I was in that room, because I did not look back. He may have been behind me. I did not see Callis-o Tortes sitting with my boy. I did not thing thzt my son would be there.

Q. Whe did not you turn around and look out of this door, when the shooting was going on outside?

A. I had no business to turn around I was quiet there inside.

Q. You did not have to turn around to know what was
356 going on outside, did you?

A. No sir, I was still. When I left the building and got out side no one told me Stanley had been shot. My brother Ignacio Costa did not come out and tell me Mr. Stanley had been shot. After I had been home a little while he came over and told me about it. I was judge up there in the reservation elected by the people. I did not get the appointment from the government I was elected by the people that is the way we always do. I did not go over to see Mr. Stanley when I heare he was shot because we were fixing up to go to Riverside, and I did not think of going there. I did not stop to see whethere he was dead or alive before leaving for Riverside.

Q. You knew you were on a government reservation? didn't you?

A. The reservation belongs to us.

Q. You mean belongs to the Cahuilla Indians?

A. Yes sir.

Exception No. 82.

And the government has not any right on it, is that the idea? Objected *by* by *cohels* for defendants on the ground that it is nort proper cross examination that it asks for a lega- opinion or conclusion of the witness. Whereupon counsel for the prosecution asked the following question.

And you believe that day that the government had no right on the reservation?

Counsel for Defendants interposed the same objections as to the previous question.

The objection was overruled by the court to which ruling of the court counsel for the defendants then and there excepted.

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A. I did not think anything of that. I cannot say that anybody else has a right, but since I have been raised there, I always say that the land is mine. Leonicio Lugo did not tell us to get together and go to Riverside, to see Senator Estudillo about the trouble as
357 soon as we could. He came to my house and told me that Ambrosio had done something wrong. That he had shot Celso and that we had better take him down to Riverside. When the sheriff cought up with us, Leonicio was not in the wagon with me, he was in a different wagon. Sanchez Lubo and Cornelio Lubo where in a wagon with me. Leoncio's wagon was ahead of me Sheriff Wislon did not say to us as he came up to us, "Where is the man who killed Stanley, where is the man who shot Stanley he said: "How do you, boys, do you come from Cahuilla, is there any one here who has been shooting? Sanchez replied to him: "Yes. This was said in English, I do not understand English, but Sanchez told me about it. I didn't understand what Wilson said. After I got the gun I did not remove any of the loads from it. That is the gun. (Indicating) There were 2 loads in it. I did not see how many empty shells. There were shells in every chamber, I know two of them were bullets because I saw them. The other 4 were empty. That is the way Charlie Arenas gave it to me, and that is the way I gave it to the sheriff.

Redirect examination.

By Mr. ESTUDILLO:

When we met the sheriff in his machine we were about 15 miles from Riverside, when we had come from Cahuilla.

Recross-examination.

By Mr. ROBINSON:

Q. Did anybody there give you any reason for not going to San Jacinto, before you started for Riverside.

A. No sir, nobody said anything. San Jacinto is a little nearer than Riverside, to Cahuilla, I don't know how many miles it is, I think it is twice as far to Riverside. You can — Soboba from San Jacinto.

358 JUANITO CASERO, a witness produced on behalf of the defendants testified through the interpreter, as follows:

My name is Juanito Casero, 58 years of age, I cannot read nor write, I was at the school house on the second of May of last *yer* year. I did not hear any of the conversation there, I was quite a ways off. I did some talking myself. I said that I had my own bull and that I was branding my own calf. I saw John Largo leave the school building and then I heard some shots after that.

Cross-examination.

By Mr. ROBINSON:

Exception No. 83.

Q. You are a medicine man, are you?

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Counsel for defendants objected to the question, on the grounds that it is not proper cross examination. The objection was overruled by the court, to which ruling of the court, counsel for defendants then and there excepted.

A. No sir. I am a dancer, that is all, for years. I do not make my living by dancing. I make my living by working. Any kind of work. I do not practice curing people by blowing on them. I am a married man. I went over to that school house on May the second. When I got to the school house the people were inside. I sat right in the middle of the school room. In the second seat next to the front seat in the row of desks to the right of the center aisle. When I got in there and sat down there were plenty of vacant seats in the school room. I was not one of the first who entered the school room. I did not hear Ignacio Coast, Leonicio Lugo, or Pio Lubo say anything in there. I remained after the others went out. I was not doing anything during the meeting. I heard them talking in there but did not hear what they were saying. I
359 heard some shots outside. I did not look out the door — what was happening. I saw Stanley going out. I was not alone in the room, Ignacio and Juan Costa were there. I did not see Callisto Tortes there. Did not see Dominguez Costa in there. I did not go outside when Mr. Stanley went, bec*ause* there was nothing for me to go out for. Mr. Stanley came back through the room, he went towards Ignacio Costa I saw Pederson and Stevsns also go by. Stanley came by after them quite a little while.

Q. The reason you did not go out, was, that you knew those men were going to start some trouble as soon as you went out side the school house, didn't you?

A. No sir, I never thought anything of that kind.

—. Didn't you and Juan Costa and Leonicio Lugo and Ignacio Costa and Ambrosio Apapas talk over a plan the night before to run Mr. Stanley off the reservation?

A. No sir, I did not hear anything of that. I did not see Ambrosio Apapas in that school house. I saw Ignacio Costa pull up Mr. Stanley's shirt and point to the wound in his back, then I went out.

After the usual admonition to the Jury an adjournment was taken to March 14, 1913, at 10:30 A. M.

(Stipulated that if Dr. H. R. Martin a witness for the prosecution as well as for the defense is called this morning, he will testify that the wound received by Francisco Lubo was a pistol shot wound. That Dr. Martin is a doctor who testified that he performed the operation on Mr. sStanley and removed the Ball.)

IGANCIO GUACHE, a witness on behalf of the defendants, testified as follows:

My name *if* Ignacio Guache, I live in Santa Rosa, Santa Ros*e* is 12 miles from Cahuilla, am a Santa Rosa Indian. Went
360 over to *to* Cahuilla on the first of May, the people were decorating the graves that day. I went over to Juan Costa&s

house that night. I went over to the school house on May second. I must have been at 8 o'clock in the morning or something like that, I went over there to look for mail, I saw the people go in so I went in. Stanley was there when I got there. Stevens and Pederson were there. Ignacio Costa was there. I understand the Cahuilla tongue. I got there a little late so I don't know what they were talking about. Mr. Stanley is the only one I heard talking. I did not hear Pablino Lugo say, "If you fellows are afraid I will drag him out by the hair." I did not hear Pablino *hear* say anything. I never saw Apapas at Juan Costa's house the night before at the Fiesta. I don't know Apapas' wife. I heard some talk about bulls and the branding of bulls from Mr. Stanley. I did not hear Capt. Lugo say anything about the branding of bulls. I heard Santos Lugo tell the interpreter that he had one of the bulls in his pasture, that his cattle were kind of wild, that the best thing to do would be to get him out of there where he could be handled and branded. I did not see Leonicio Lugo in there, I saw John Largo and Celso Serrano there. I saw John Largo leave the building. At the time I heard the shots everybody went out. I did not go out, I remained right there at the corner of the school house. I did not see what happened outdoors.

Cross-examination.

By Mr. ROBINSON:

I am a Santa Rosa Indian. I was not policeman at the Santa Rosa Reservation at that time. It was before Mr. Stanley became superintendent of the Santa Rosa Reservation. I was not very well acquainted with Mr. Stanley. I know Charley Van de Wenter the forest guard. I never talked to Charley Van de Wenter
361 about this case. I did not tell Charley Van de Wenter that before I went to Cahuilla I knew that Stanley was going to be killed. I heard some shooting outside while I was in the school building. I wanted to see Mr. Stanley about some business I had with him. I saw Mr. Stanley leave the building. I stayed in there waiting for him to return. When he returned I did not speak to him, because by that time I went out. When the people were *go* going out, I went out by that time. I was not clear outside when the shooting was going on. That is clear out of the school. I remained right there at the little hallway. I saw Mr. Stanley return and go by into the school room, Stevens and Paderson were just ahead of him. They ran through. I did not speak to Mr. Stanley then because I went out and did not come in again. There was no need of me going in again, when I could not speak to him after the trouble was on. I did not know Mr. Stanley was shot until afterwards. I heard he was shot a little while afterwards, about 20 minutes, I guess. I don't know who told me, I just heard it among the people. I did not go back to see how the man was, because nobody was allowed to go near.

Q. Did you try to go and see if you would be allowed to go in?
A. I went right in front of the cottage and Stevens you know

he was there, so I did not go in. Stevens told me he was afraid of the people, but they told him there was no danger of anybody doing anything more.

Q. How do you know that?

A. Well, I know that there was no trouble at all about it.

Exception No. 84.

Q. You knew that they had finished, what they set out to do, didn't you?

Question objected to by counsel for defendants upon the ground that it is not proper cross examination that it has assumed a state of facts that the evidence does not show. The objection
362 was overruled by the court *ot* whish ruling of the court counsel for defendants then and there excepted *to*.

A. No sir, I said I did not know anything about it. Ignacio Costa did not tell Stanley what Santos Lubo said about his bull. He did tell what Leonicio Lugo said. I heard Mr. Stanley talking to the people, that is all, the only part I heard was that he said he had authority to brand the bull. I did not hear Ignacio tell Mr. Stanley what Leonicio said. I walked into the school room alone. They were all in there when I got to the school room. I did not see Pio Lubo, Pablino, nor Ambrosio Apapas in there when I went in. I just saw the crowd, and I did not know who they were. I sat in the back end of the school room The only persons I noticed in *that* were, Mr. Stanley, Mr. Pederson Mr. Stevens and Ignacio Costa. I knew the rest of them. I went out after everybody else went out. I was not in that room alone. When the shooting was going on I got up and went out to the hall way there. That is as far as I got. I did not see Mr. Stanely standing in the door way. I saw Callisto I mean Callisto Tortes, I did not see him stay in the room and sit down. I went out because I wanted to get out. Between the time that I got up to leave the room and the time that I got out of the building, it must have been a minute. There were several shots fired but I did not keep track of them. The shooting continued for a time less than a minute. I don't know how long I stopped in that hall way. I could not go through because Callisto was in front of me. And when I saw him I did not want *throug*, he met Mr. Stanley right there, so I did not rush through, I did not see Mr. Stanley turn but he came in the door.

Q. Just as he came through the door, there was a shot, was there not.

A. No sir, I did not hear any shots after that. Before that
363 I heard many. But I don't know how many. I did not sleep at Juan Costa's barn. I stopped at Patrick Casero's place. I am not related to him. I am a full blooded Indian of the Santa Rosa tribe. When Mr. Stanley came back he was bending over, I did not hear h-m say "My God".

AUGUSTIN HAMILTON, a witness produced on behalf of the defendants testified as follows:

My name is Augustin Hamilton, I live at C-ahuilla, have lived there all my life, I don't know how old I am. I was there on the first of May last year. I was over at the Fiesta *as* Juan Costa's house. Apapas was not there. Apapas's wife and his daughter were there. On May the second I went over to the school house and went inside. When I got there the pupils were in the school. They got out. Mr. Stevsns the teacher was there. I took a seat inside. Ignacio Costa came in afterwards, I went over by myself. I heard Ignacio and Mr. Stanley talking together Leonicio Lugo and Cornelio Lugo were there. I don't remember very well what they were talking about. John Largo and Celso Serrano were in the building. I did not see John Largo leave the building. I left the building before they got out, and I walked along on the walk marked on this diagram through the gate west of the school house and then North of that gate to where the fausset is. That fausset is about this far. (indicating a place marked with 3 lines crossing each other.) There is water at that fausset and it is a different place from the fountain. There is a road west of the school house, and I went to the water there. Leonicio Lugo was with me. He went to the same place. The first thing I know *this*, when I reached the water there was a gun shot. I turned around and I saw Celso and Ambrosio coming together. I did not see John Largo at all. Celso had a revolver in his hand. I did not see Francisco Lubo. Of course there
364 was a lot of them there, but I did not notice *the* them. Celso fired at Ambrosio, he fired only once, then I ran to where they were. Celso was standing at a place north of the *slath* west corner of the school house where there is a square with a line through it. Ambrosio was standing at this place near a circle with a lot of lines through it and half an inch south of it. Celso was facing west while he was firing it. Celso fired one shot before Ambrosio fired then he fired again. They fired together at once When I got where they were and they fired at each other I ran away. I held out my hands like this (indicating) After I held out my hand they shot at each other and I ran away.

Cross-examination.

By Mr. ROBINSON:

I went to the school house by myself, after I was in there Ignacio Costa and the others went in. I went in to see a school teacher that morning. I just went to see him, visiting. I knew the other people were coming over there to see Mr. Stanley, I knew that because Leonicio and Ignacio were going to come. I knew that because I heard them talkin- at Juan's place. I was standing there with Ignacio and Leonicio, these two said they were going to see Mr. Stanley about Cornelio. Cornelio spoke to Leonic-o Lugo*the* said that Stanley wanted him at 9 o'clock in the morning, so Leonicio got Ignacio to go with him. Leonicio said that Cornelio told him that night, that Stanley wanted to see him in the morning.

Q. You just went over there to get a good seat in the school building to see what would happen.

A. Yes.

Q. So that is what you went in for, and not to see the teacher.

A. Well, I said I was going to visit him in the morning.

365 Q. Yes, you said that, but you went over there to see what would happen when they came over there and went after Stanley didn't you? That is what you went in to see, wasn't it?

A. No. I sat in the center row. I don't know who sat next to me, all the people where in that room, but I don't know where they were sitting. I did not see Ambrosio Apapas there, Pio Lubo was in there, he came after I did, about a couple of minutes, I did not hear him talk during that meeting. He was there. I noticed Pio and I remember he was there, because I was looking at him. I was sitting there (indicating the 3rd seat from the rear of the room, in the first line to the left of the center aisle as you enter). Pio was sitting right here (indicating the seat ahead of that in the row to the left of the one in which the witness is sitting.) I did not hear anything that Pio said. I did not see Ambrosio Apapas sitting in there. I remember that Mr. Stanley was talking to Leonicio Lugo in that room. He asked Leonicio Lugo what he wanted to see him for and Leon-cio said that Cornelio told him that Mr. Stanley wanted to talk to him. So Leonicio wanted to talk to him about it, about Cornelio. Leonicio does not speak En*b*lish, that is I never heard him speak En*b*lish on the Cahuilla reservation. I have heard him talk to white men up there, he talks in Spanish. Leonicio said to Ignacio in the Cahuilla tongue he wanted to know why Mr. Stanley wanted Cornelio, Mr. Stanley said, he wanted to see him, and that he did not want to see Leonicio that he did not recognize Leonicio as captain and the governe*mtn* did not recognize him as captain.

Q. And Leonicio said he was elected by his people and had a right to know.

A. Yes. That he was the head man he said. He said he was the head man of the reservation. He wanted to know what Mr.

366 Stane*ly* or any stranger wanted to do with his people. I heard Santos Lubo talk about his bull after Mr. Stanley said that he was coming *t* -or his bull.

Q. And Santos told Mr. Stanley if he branded his bull he could take it off the reservation?

A. He said he would take it outside of his pasture.

Q. Well, he said that he could take it off the reservation too, didn't he?

A. I did not hear that.

Q. Didn't you hear Mr. Stanley — he could not drive any bull of- *the* the reservation without authority from Washington, you heard him say that didn't you?

A. He said that, but nobody said anything about it. I did not hear him say that he will write to Washington and see if he would get authority to take them off the reservation. I heard Juanita say, that he could brand the bull, but he did not have any bull himself. I heard Mr. Stanley say that the calves would belong to anybody on

the reservation that raised them. Nobody asked Mr. Stanley — he would own the calves, he said the calves belonged to the Indians. Leonicio did not say anything about the bull. I heard what Mr. Stanley said that Celso was appointed for his guard. I did not hear Juan Costa say that he did not want Celso for his guard. Nobody told me to leave the *bui* building. Leonicio and I did not go out together. I went out ahead of him. I did not hear Leonicio say, we have got no more busines- with — come on out. I am sure I did not hear that. I was near the pipe outside of the gate when I heard some shooting. I turned right around and heard the gun fired. I did not count the shots there were several of them. I saw Ambrosio near the fountain. He was walking across the patch to the fountain. Ambrosia did not have his gun out then, I don't know where the gun was. I ran back here. I — Celso shoot at Ambrosio.
337 Ambrosio stopped and pulled that gun. Nobody else had a gun there. After I turned around Celso fired once and when I got between the*n* he fired another. He fired twice I came right through the front gate and ran over to them, at that time Ambrosio shot at Celso once. That was three shots that I heard. Before that I heard several. (Witness told by clapping his hands about how the shots sounded behind him, before he turned around.) A. Well, they came this way, (clapping twice) in that way, (clapping once). There may have been more than three shots but I don't remember. They came close together, two of them did. I saw the gun that Apapas had in his ha*dn*, but I did not pay any attention to it, I don't know which gun it was. I do not know Celso's gun. I never saw John Largo's gun when he had it. I never saw Apapas' gun. That one shot is the only shot Apapas fired that I know of. After Apapas fired Celso ran east, jumping over the fence. Apapas was right there. (Witness indicates place right near the edge of the path and slightly in front of the corner of the school steps, which is marked "A" in a circle.) He did not have his gun in his hands then. I don't know who had it, I know he did not have — because there was nothing in his hands, I could see both of his hands. I did not see Mr. Stan*ely* on the porch. I saw Apapas and other- standing. I went away towards Juan Costa's place. When I got there I did not meet *meet* Leonicio. I went there got my horses and went home, two and a half miles from the school house. I had a team of horses there and drove home. I was standing there hitching my horses when Carl Stevens came there and told me to go after Celso. I went after him. Juan, Pat Casero Dolf Lugo and Carl Stevens all of us followed Celso's tracks. We tracked him for a mile and
368 a half, then we came back, I got Celso's horse, *whet* with Mr. Stevens again to the school house and I asked him to go with me. Th*en* I heard that Mr. Stanley was shot, Mr. Stevens told me. I did not go in to see him. When I came out of that *ga* gate and turned I saw Apapas standing in ffront of the steps. I watched him for a couple of seconds, I think, then I went away. I did not run I walked slowly out of the gate, down the road going north. As I walked out of the gate, I did not hear any shots fired. I did not see Celso stagger at that moment I turned around and ran back

again. I saw Celso go over the back fence. He is my half brother. I was going to see if he was hurt, that is why I went after my horses. He was not going towards my home.

Redirect examination.

By Mr. ESTUDILLO:

That water out on the road west of the school house is about 100 feet from the fountain north of the southwest corner of the school house. When I went over to the school *hou* house I did not expect that there would be any trouble there.

Recross-examination.

By Mr. ROBINSON:

When there was trouble there I did not make any effort to find out how it started. I did not ask anybody about it. I did not ask why Celso was shooting at Ambrosio.

Exception No. 85.

By Mr. ROBINSON:

Q. As you were coming out of the school house did you see Ambrosio Apapas outside?

A. No, I did not see him.

Q. Did you see him in the front yard?

The question was objected — by counsel *of* Defendants on the grounds that it is not proper cross-examination. The objection was overruled by the court, *to* which ruling of the court, counse- for defendants excepted then and there.

369 A. No, did not. I did not see him in the lane at that time.

JUAN TORTES, a witness produced on behalf of the defendants, testified as follows:

Direct examination.

By Mr. ESTUDILLO:

I can talk a little English but not much. My name is Juan Tortes, live at Soboba. I was born there. Antonio Tortes is my father. I know Mr. Stanley. My father was sick once and I asked Mr. Stanley to allow me to get a doctor for him. He put me in jail, because I told him I was going to get a doctor for my father who was sick that he put me in jail, because he was not going to allow me to get that man. A fellow by the name of Manuel Tortes.

Cross-examination.

By Mr. ROBINSON:

Manuel Tortes is an Indian, lives on the Santa Rosa reservation, is an old man. I don't know whether he is a medicine man or not,

but he knows how to cure. He is not a medical doctor, that is he is not an American doctor. (It was conceded that Manuel Tortes does not belong to the al-opathic, hom-pathic or *a* ellectic school of medicine.) I did not get him for my father because Stanley did not want me to have him. I did not take my father off the reservation to him. Manual Tortes came there, but Stanley ran him off. He did not cure my father. So when I came from
370 work, my sister came and told me that our uncle Manuel Tortes had come to cure my father but Stanley had run him off, so I went over to Pa's house and told him that I wanted to ask something of Mr. Stanley, that I wanted him, Pa, to go as a witness and hear us talk. As Mr. Stanley wants to put me in jail for having talked in a meeting—that was ten days before this and I was afraid he would do it again. That is why I got this Teofilio Pa for a witness. Yes, he put me in jail because he wanted to find out what I was talking at a meeting. And I told him that the captain would report that. Stanley said that maybe the captain would report something else than what I talked at the meeting. Then I said to him, "Who told you that I talked yesterday in the meeting, what you want to know?" Stanley said, "John, it is none of your business, you have got to tell me what you talked yesterday." Then I said to him, "Mr. Stanley, if it is none of my business, I can tell you nothing of what I talked." Then Stanley said to me, "John, are you going to work up here in school?" I said, "Not in the school, I have a job where I can work." Then Stanley said to the policeman, "You take this man to jail for ten days," and he took me to jail. The next day, Stanley let me out of jail when I asked him to let me finish a contract which I had picking olives for Mr. Butler, and as soon as I finish that contract he could put me in jail again, or do whatever he pleased with me. My father was sick, I don't know what was the matter with him. Manuel Tortes can cure people, I have seen him cure people.

Q*b*. You told Teofolo Pa about this matter, did you?

A. Yes, I told him to go over to the office.

Q. Did you ever talk to Leonicio Lugo about it, the captain
371 here, Leonicio Lugo, the defendant?

A. Well, I don't remember now. I told lots of fellows about it, and then I had it published in the papers, too.

Q. You went and had it published in the paper?

A. After the jailing? Yes. I was a poor man and I couldn't have him arrested. Couldn't have him in the courts, so I published him in the newspapers so that all the government employees or officers could see it and find out what he was doing with our poor Indians, so that I had it published in the paper, in the Herald, and in another—an American, he wrote to me and I sent it to San Jacinto to the office of the Herald. That is what Mr. Clark told me. He was going to publish it in the papers.

CHAPO LUNAS, a witness on behalf of the defendants, testified through Ralph Domingues, as follows:

Direct examination.

By Mr. ESTUDILLO:

My name is Adolph Lunas, but they call me Chapo. I have lived at Soboba, Riverside County, 25 years. I know Celso Serrano. I saw him at Soboboa in 1912, September. I heard Bernardo Revaloso and Celso Serrano talking about Mr. Stanley. I did not hear all of the conversation, I heard a few words. I think it was last year at the time of the fiesta. I heard Celso say that he was only shooting just to frighten him. I don't know whether I was the one that wounded the deceased. I heard Celso say that he was shooting towards the people, but I didn't hear him say that he was shooting towards Stanley. But he did say that he didn't know whether he had shot Stanley or not.

372 LEONICIO LUGO, one of the defendants sworn as a witness on behalf of the defendants, testified as follows:

Direct examination.

Mr. ESTUDILLO:

I cannot speak very much English, I talk Spanish. My name is Leonicio Lugo, I live at Coahuilla, I was born there. I am a Coahuilla Indian. I was at Coahuilla on the first of May. We had serivces at the Catholic chapel in the morning and another ceremony in the afternoon and then we went over to the grave yard and put flowers on the graves of the dead people there. That night I was over to Juan Costa's house, we had a little supper there before night, after that we had a dance and singing all night. I stayed there all that night. It is a custom of the Coahuilla people to have that fiesta, or festival, there every year. And every year they go out and decorate the graves, on the first of May. The next morning we had breakfast, about seven o'clock in the morning, I guess. After breakfast Cornelio Lubo came to me in the morning and said that John Largo had told him at night, last night, he said, that Stanley wanted him over in the school house at 9 o'clock in the morning. That is what he told me in the morning and that he wanted me to go with him because he couldn't understand English or Spanish and see Stanley for him. After breakfast, I asked Judge Costa and Ignacio Costa to go with me. Ignacio did not go along with us, but Cornelio Lubo, Juan Costa and myself went together. Ignacio followed us. Mr. Stanley was over to the teacher's house. I went to the house and knocked at the door, the other people were standing outside of the wire fence. Mrs.
373 Stevens came to the door, and I told her I wanted to see Mr. Stanley. Mr. Stanley came out and shook my hand kindly and friendly. I told him I wanted to see him to talk to him a few words, and he said, "All right." He saw the people outside, so he said there is not much room here, we had better go

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— the school house and talk over there. Mr. Stanley went through the gate, that stands between the school house and the teacher's house. I went back and then accross to the school house. The children were in the school house, they came out, and we went in the room. Ignacio Costa came then. Stanley said, "What do you want to talk to me about?" Tell me what you want." I said, "I don't want to talk to you but Cornelio wants to talk to you, he wants me to talk to you, so I came to see you. Cornelio wants me to say something to you. Cornelio told me this morning that you want him here at 9 o'clock, as he can not talk Spanish or English, he told me to come along with him and that is the reason I came with him." Then he said, "I have something to say to Cornelio myself but not to you. I want to talk to him alone, I don't want you. What are you? Are you an officer or anything of that kind?" Then I told him, "I am not an officer, but I am the captain; the people appointed me captain and I am the captain of the reservation." Mr. Stanley said, "All right, but I don't know you as a captain, neither does the government." I said, "Well, maybe that is so, but I am the captain of the reservation for the people." Then Mr. Stanley said, "I am the officer, John Largo is another officer, he is a policeman, and Celso Serrano is forester, judge and policeman. He has three charges. Any time that Celso wants to arrest a man here on the reservation, he must have a warrant
374 from me, then he has — right to arrest anybody on the reservation." After that I didn't say anything to him. He wouldn't recognize me as captain so I couldn't talk to him at all, because I obeyz the laws. After that I heard Stanley say that he had come to brand the bulls. That he had authority from the government to brand the bulls. Then Santos Lubo said, "I got one of their bulls, if you want to brand him just take him out of the pasture and brand him. It will be all right, for my cattle is kind of wild. Stanley said, "I have to brand it right there where the bull is." Then Juanito said "I have got a bull but it is my own bull." And that's about all we talked there. I don't remember some of the other words that was talked at that time, then I told Mr. Stanley that I had no more to say, so we went out. Some went out ahead of me. I went to where the water is, passed through the wire fence west of the school house as I was walking to the water, I heard some kind of a noise I turned around, saw John Largo on Cornelio Lubo's back Cornelio Lubo stooped and John went over, while that was going on, I saw Stanley standing south of the door, John was facing to the east. I saw a gun in John's hand and heard two shots fired. I saw Cornelio and others crowded around John. I heard Ambrosio say, "I got the pistol," and as soon as they got the pistol from John, Celso came out of the school house, with a pistol in his right hand, circle around and fire at Francisco who fell down. When Celso fired at Francisco, Ambrosio tried to stop Celso and Celso fired at him. At the first fire Ambros- fell down, at the second fire from Celso Ambrosio got his pistol and fired once. Celso ran away. I heard two shots from John

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Largo, three shots from Celso and one *six* from Ambrosio.
375 West of the fence which stands west of the school house, there is a water trough there. There is another one, fountain for the children, near the northwest corner of the school house. When I heard the first shots, I had not yet reached the water trough west of the fence. A noise attracted my attention first and when I turned I heard a shot. I saw Stanley then standing with a white shirt on. Apapas was not at the meeting at Juan Costa's house the night before the 2nd of May. His wife and daughter were there. After the shooting I went to Riverside in the wagon. Before leaving, Juan Costa showed me the pistol that Charley Arenas had taken from Ambrosio and given to him. He said it was John Largo's pistol and that Ambrosio had shot Celso with it. Ambrosio came and surrendered himself to me, saying that he had shot Celso, that he had done bad things. And that I had a perfect right to do with him whatever I wanted. Then I said to Apapas, "I will take you to Riverside." Go home and be ready pretty soon, because we will go." Then I went over to Judge Cost-'s house, asked him to go to Riverside with me. At Costa's house I saw Francisco Lubo who had blood all over his shoes and who was wounded in the knee and who found a bullet in his shoe, which he gave to me. Francisco told me that Celso tried to kill him. Then Cornelio come up and said that John tried to kill him, so I told them to come over and go to Riverside with me. Then I got Santos Lubo to come along with his team. We had two spring wagons. I gave Apapas up to the sheriff when we were between Alessandro and Riverside about fifteen miles from Riverside. I was arrested on the 12th day of July. I did not ask anyone in the school building on that 2nd day of May to leave the building with me.

376 Cross-examination.

By Mr. ROBINSON:

I said Mr. Stanley had a white shirt on while he was on the porch.

Q. Isn't that the shirt Mr. Stanley had on that morning, a blue shirt?

A. It seems to me that it was a white shirt, that is not white.

Exception No. 86.

Q. That is not the shirt, is it?

A. No sir, it was white.

Mr. ROBINSON: We will ask that it be marked United States Exhibit for identification. I want to identify this that this witness said that it is not the shirt that Mr. Stanley had on.

Counsel for defendants objected on the grounds that it was getting evidence before the jury indirectly. That counsel should have put *in* in his main case; that there is no proof that the shirt is anybody's shirt, other than it is a blue shirt. The objection was overruled by the court, to which ruling of the court, counsel at the time excepted.

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The shirt was marked United States Exhibit 16 for identification. Exception No. 87.

By Mr. ROBINSON:

Q. Instead of being in his shirt sleeves that morning when he came on the porch, didn't Mr. Stanley have on this coat which I show you?

upo The question was objected to by counsel for defendant
377 upon the grounds that — is incompetent, irrelevant and immaterial and not proper cross examination. The objection was overruled by the court, to which ruling of the court the counsel for defendants, then and there excepted.

A. I never noticed it.

Q. Would you say that he did not have one?

A. I never noticed, I say, whether he had or not. When he came out on the porch, he didn't have a coat on, he had a white shirt on. I don't know exactly how old I am, I think fifty. My occupation is labor, I have a little farm in Coahuilla.

Exception No. 88.

Q. During the last five years at what have you labored?

The question was objected to by counsel for the defendants as not proper cross examination. The objection was overruled by the court, to which ruling of the court, the counsel for defendants then and there excepted.

A. Oh, I have worked my little place there, plowed and planted grain—crops every year.

Q. What kind of crops?

A. Corn, beans, Pumpkins, watermelons.

Q. How many acres?

A. Oh, about two acres. I have a little piece there and I have got a big piece there, about 80 or 90 acres, where I put in the grain, barley or wheat. I put in grain, barley or wheat every year. We had a ceremony at the Catholic chapel on the morning of May 1st. I conducted the ceremony myself. I am not a priest, but I know a little bit about it. I was appointed captain in 1908.
378 And last year, in July, I was elected again for four years. That was after my arrest, I guess. I stayed up at Juan Costa's hou-e all night. In the evening, about 8 or 9 o'clock, they had what they call a step dance there. Two men were dancing that and after the dancing we had singing all night. I helped sing but did not dance. I saw John Largo and Cornelio Lubo there. Cornelio Lubo told me in the morning, about seven o'clock, that John Largo had told him that Stanley wanted to see him that morning. I did not tell Ignacio Costa the next morning that Cornelio had told me during the night that John Largo said that Stanley wanted to see him. I told Ignacio Costa in the morning. I asked Ignacio Costa to go because he is the judge. I was in charge of the reservation.

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Q. You had been discharged as captain by Mr. Swayne had you Not?

A. Yes, he told me once.

Q. And you were still captain after being discharged, were you?

A. Well, the people wanted me for captain, so I stayed, he didn't put me in as captain. The people elected me as captain. He didn't elect me as captain.

Q. Did you think when you went over there that day that Mr. Stanley had no right on the reservation?

A. That is what he told me, that he had no right there.

7. Q. Well, what did you think about it?

8. A. All right, I didn't think anything at all.

Q. He told you that you had no authority there, didn't he?

A. That is what he told me.

379 Exception No. 89.

Q. What did you think about it?

The question objected to as not proper cross examination as there is no evidence here that this man — hurt Mr. Stanley shot him, or did anything at all to him and that it calls for a legal opinion or conclusion of the witness. The objection was overruled by the court, to which ruling of the court, the counsel for defendants at the time excepted.

A. Oh, I didn't think anything at all, I was satisfied with what he told me.

Q. You were satisfied that you had no authority from what he told you, is that it?

A. Well, he told me I had no authority, so I told him, "All right," I was satisfied with what he told me. Yes that is true. I did not tell anybody else, except Ignacio and Juan Costa and Cornelio, that I was going over to see Mr. Stanley. When I got over to Mr. Steven's house I went to the front door alone. I didn't take Cornelio to the door because I went myself to see Mr. Stanley first. I told Mr. Stanley that I wanted to talk a little bit with him and he said it was all right. We will go over to the school house.

Q. Well, why didn't you tell him there was room enough right there.

A. I couldn't tell, I know that is the office there. It belongs to us that is the reason I went over there to ask him, you know, but he said the school house, because he seen the people outside, that

380 is the reason he wanted to go to the school house.

Q. Why didn't you tell him those people had nothing to do with it, that you didn't want those people there, that you had business with him yourself.

A. No, I didn't say that because I had no business to say that. I didn't tell Mr. Stanley that more room was needed for the crowd, that only Ignacio, Cornelio and myself came to see him, because I didn't expect the people to go into that school house at all. I just thought that we three would go in, that's all. Mr. Stanley shook hands with me at the door in a friendly way, I have never had any trouble with him. He has always treated me in an friendly way. He was always pleasant and kind when he talked with me. I did not

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walk over from the hou-e of the Teacher to the inside gate of the school house. I walked out to the crowd and went over with the crowd. That is the crowd followed us to the school house. Three of us went together. It is not a fact that while I was walking with Cornelio some of the men from Juan Costa's were coming behind and that I waited for them to catch up with me. When I went into the school room the children came out, that is true. I sat in the front seat. I do not remember who was back of me. I was sitting in the seat, connected with the desk and marked "A" on Diagram A. Juan Costa was sitting in the first seat in the row next to where I was sitting. Ignacio Costa was sitting in a seat just in front of me. I do not know where Juanito Casero was sitting. I heard him talking back somewhere but I don't know where. I don't know how far behind me Cornelio was sitting, one or two desks behind me, I think, so I could turn and talk to him. There was no one between Cornelio and myself. When we went into the school house, I appointed Ignacio interpreter. And the first
381 thing Mr. Stanley said was to the interpreter, "Ask Leonicio what he wants to talk to me about." I do not understand English very well and did not speak to Mr. Stanley in English. I have not understood very well what you have said. That was the reason I did not speak to Mr. Stanley in English because I couldn't talk very well. Mr. Stanley did not say to me, "What is the meeting for" he said, "What do you want to talk to me." And I replied that Cornelio came to me this morning and he asked me to come along with him and that is the reason I came, that is the reason the judge and my interpreter came. Then Mr. Stanley did say that he wanted to talk to Cornelio alone. Then I said to him, "Very well, the reason I came with Cornelio is that he spoke to me and asked me to come and speak to you for him." Then Mr. Stanley said, "I don't recognize you, what are you?" And I said to him, "I am the captain the head man here on the reservation." "The government does not recognize you," Stanley said. I said "All right but I am not appointed by the government, I am appointed by the people on the reservation." I said to him, "The people appointed me captain to see upon the reservation if anything happens I have to see about it, if anything happns I have to see, I have to hear, I have to see any thing that happens upon the reservation."

Exception No. 90.

Q. The Coahuilla reservation was not the only one that you were captain of, was it?

Question objected to by counsel for defendants, on the grounds that it is incompetent and not proper cross examination. The objection was overruled by the court, to which ruling of the court
382 counsel for defendant then and there excepted.

A. I don't understand what you mean.

Exception No. 91.

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By Mr. ROBINSON:

Q. Isn't the reason that you didn't talk to Mr. Stanley in the English language but talked in the Indain language that you wanted your people there to understand at that meeting that you were talking as their friend and Mr. Stanley's enemy and dictating to Mr. Stanley?

Question objected to by counsel for defendants upon the ground that it is not proper cross examination that there is no evidence shown that witness was Mr. Stanley's enemy.

The objection was overruled by the court, to which ruling of the court, counsel for defendant then and there excepted.

A. No, sir. I don't understand that, it is pretty hard for me.

Mr. ESTUDILLO: I will ask that an interpreter be appointed to explain that to him, if counsel insists upon asking the question. The witness says that he does not understand, that it is hard for him.

The COURT: I will not require him to answer a question that he does not understand.

Mr. ROBINSON: I am satisfied with his answer that he does not understand it.

Q. Mr. Stanley said to you that he was an officer on the reservation, and here was another, John Largo and Celso Serrano, that is a fact, isn't it?

A. Yes. I don't remember whether anybody said anything when Mr. Stanley said that Celso Serrano was an officer on the reservation. Maybe Juan Costa said that. I don't remember I was
383 friendly to Mr. Stanley since he had been a teacher at Soboba.

Exception No. 92.

Q. If you were a friend of his why did you write this letter of October 25th, 1911?

Question was objected to by counsel for defendants, on the ground that it isn't proper examination, that it is not an impeaching question and has no tendency to impeach the witness. The objection was overruled by the court, to which ruling of the court, counsel for defendants then and there excepted.

A. What?

The letter of October 25th handed to witness who said that he cant' read*y* very well.

By Mr. ROBINSON:

Q. Do you remember sending a letter to Washington at that time, protesting against Mr. Stanley as superintendent?

A. Yes, I remember it all right. The Soboba people came to me, asked me about it and I sent it because they wanted it. They knew what kind of a man he was. The people of Coahuilla didn't want it, Soboba did. And they asked me to write a letter for them. When Mr. Stanley said that he was coming over there to brand the bulls, Santso said "I have one of them in my pasture and if you want to

brand him, you had better take him out from the pasture and brand, my cattle is kind of wild" he says, "and I don't want to scare my cattle," he says. If anybody else said anything about the cattle. Just Juanito that's all. After that I don't — what was talked afterwards. Oh, yes, he said, John Largo was a polic-man Celso Serrano is forest guard, judge and policeman, he has three charges.
384 If at any time Celso arrests anybody he must get a warrant from me. The Indians didn't say anything to him about it at all. Stanley was talking to Santos at that time. After that I could not tell how long afterwards, the meeting broke up. I don't remember what else they talked about after they talked in reference to Celso's appointment. I must have been thirty or forty minutes, we didn't stay very long. We must have gotten there about half past eight.

Q. And the shooting took place about a quarter to ten or ten o'clock, didn't it?

A. Before that, I guess, about half past nine, or ten, I don't know, couldn't say. Nob-dy else besides Juanito, Santos, Ignacio Stanley and myself talked. I do not know how long it took us four to say what I say was said, may be forty minutes. I stayed there without talking sometimes, we didn't talk all of the times, Sometimes I would sit all quiet.

Q. Why did you tell Cornelio he would better go out when Mr. Stanley said he wanted to talk to him?

A. Well, I didn't say that, I told them just to go out that's all. I said that to Juan Costa, Ignacio and Cornelio.

Q. Well, why did you tell Cornelio to go out.

A. Well, we were all going out, your know, and I told them to go out. I didn't say for Cornelio to go out, but I say, you know, to go out.

Q. When you knew Mr. Stanley wanted to talk to Cornelio why did you tell Cornelio to go out?

A. Well, I didn't have no right to tell him to stay or to
385 go out. I just told Juan Costa and Ignacio to go out and we went out. There was no conversation there about what would be done with the calves if the bulls were branded. Pio Lubo did not talk at that meeting. He may have been at the meeting I didn't see him. Pablino must have been there, I didn't see him. I think Cervantes was in there, I saw him outside but did not see him inside. I did not see Apapas in the building at all, I saw him outside of the building. When I walked out of the building and towards the gate and out the gate, I was alone. Hamilton was ahead of me and some one was behind me, two or three men. I did not wait for Cornelio and Ignacio and Juan because I was going to drink water then. I think they stayed in the house there. After John Largo fell over, he pulled his gun, Cornelio grabbed hold of him. I didn't see whether Cornelio held his hand, I was too far away. I just saw John was facing to the east and Cornelio to the west when John fired. Right then I looked and I saw Mr. Stanley in the door to the south there. That was before the shooting happened. After the shooting I didn't see him. When they made a noise I turned back and saw John on top of Cornelio, after falling down and get-

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ting up, he fired immediately. I couldn't say if it was all over in two or three seconds or two or three minutes. I know he fired twice. I saw Stanley before John went over Cornelio's back, when I turned around, the first thing I saw was John holding onto Cornelio's back, I watched John go over.

Q. You didn't take your eyes off of him?

A. No, sir, I seen it.

Q. And you saw John go down and pull his gun, didn't you?

386 A. Yes, sir.

Q. Didn't take your eyes off of him?

A. No, sir.

Q. And you saw him get up with his gun and Cornelio grab his hand, did you?

A. Yes and fire.

Q. And you didn't take your eyes off of him?

A. No, sir.

Q. And you saw him fire, did you?

A. Yes, sir.

Q. And you didn't take your eyes off of him?

A. No, sir.

Q. How did you see Mr. Stanley in the doorway?

A. Well, the first time I seen it and atferwards I didn't see it, maybe he was there and maybe he was inside, or on the ground. I didn't see him, but when I turned I saw him standing in the doorway. The first moment when I turned I saw him standing in the door. I don't — what he was looking at, he was looking, he was facing the west. I did not see him facing any other way. I think he was facing towards the three men, facing west towards those two men there. I am sure that it was Mr. Stanley that I saw in the door way. I knew his face. Apapas said I have got it. I knew he meant the pistol when he said that. He said, "I have got it," I seen it in his hand.

Q. Because you knew your plan was for your men to get John's pistol away from him that morning, didn't you?

A. No.

Q. How did you know that he meant the pistol when
387 Apapas whom you had not seen before, said, "I got it"?

A. Well, all the people was around there and they got John, you know, and got the pistol and Apapas said, "I have got the pistol."

They did not have John on the ground, Apapas was on the south side of John, I couldn't say, I do not know where Apapas came from. I saw him standing there, you know, when he talked that way. — That was the first time you had seen him in two days, was it not?

A. Yes sir.

Exception No. 93. The foregoing question was objected to by counsel for defendants on the grounds that it is not proper cross-examination. The objection was overruled by the court, to which ruling of the court, counsel for the defendant then and there excepted.

It was after Apapas had said "I have got the pistol" that Celso came out of the school building. I didn't see Mr. Stanley outside then. When Celso came out, he circled around with a pistol in his hand, he came towards Francisco and shot him right away down at the ground. Francisco had not run over to him, he held up his hands that way (indicating) when Celso shot him, he fell down. I thought he was dead. Francisco did not make any move towards Celso, he was standing still right there. Celso did not fire another shot at Francisco. Celso was at the same place when he fired at Ambrosio that he was when he fired at Fancisco. Celso was firing towards the *sh*cool house. Celso was standing right here (pace designated by a circle with a line through it near the arrow which is pointing away from the dimension line of the fountain).

388 He was firing in this direction here to the southeast. I couldn't say exactly where Ambrosio was standing, but it was there in front of the school. Ambrosio came this way and from here shot Celso, right here somewhere (indicating) that Ambrosio walked north towards the fountain and fired east at Celso.) I think it was firing towards the back of the school, I didn't notice it very well, I was too far away. After Ambrosio fired that shot he went towards the west gate of the school house. Ater Ambrosio shot Celso he was standing right there at the place from where he fired, when Charley Arenas came and got the pistol from him. That shot that Ambrosio fired at Celso was the last shot fired that day. There were only three shots fired out of John Largo's pistol that day, two by John Largo and one by Ambrosio. There was no other gun fired off. When Ambrosio fired that shot at Celso, Celso ran away, he staggered back (illustrating). After the shooting I went there where the fence is inside of the yard to see Juan Costa who called me. He handed me the pistol but I would not take it. I told him to keep it. Then after that I walked away. I never noticed at the time whether Celso had been hit or not. I did not know it until afterwards when Ambrosio told me. I saw Celso load his gun after he went over the fence on the east side of the school. At that time when he loaded his gun, he was pretty close to John Largo's house. I did not see him any more that day. I left Coahuilla without seeing him that day. Ambrosio came to me and told me that he had shot Celso. He did not say anything about shooting Mr. Stanley.

Q. Do you mean to tell us that without seeing Celso without finding out that he was wounded, just because that man

389 had told you that he shot him, that you started out at night to take him away down to Riverside?

A. Afternoon, it must have been about two o'clock afternoon. It is not 100 miles do*q*n to Riverside.

(It is stipulated that it is 63 miles.)

Exception No. 94.

By Mr. ROBINSON:

Q. You started down to go *to* 63 miles to Riverside with this

man without knowing the man he shot at was hurt or not was that a fact?

The question was objected to by counsel for the defendants upon the grounds that it is not proper cross examination. The objection was overruled by the court, to which ruling of the court, counsel for the defendants then and there excepted.

A. Well, Ambrosio told me he shot him. I did not know whether Celso was hurt or not. I started to Riverside with Ambrosio because he told me he shot him. We were going to give him up to the sheriff.

Q. Was that the only reason you were going to give him up to the sheriff, because he said he shot a man?

A. That's what he told me.

Q. Was that the reason you were going to take him 63 miles and give him to the sheriff?

A. Yes sir. The man he shot was not running over the hills. He did not walk but he went fast. When we were near Perris with Ambrosio in the wagon with us, the sheriff caught up with us, but he did not say, "Where is the Indian that shot Stanley?" He said,
"I came after Ambrosio." He did not ask where the In-
390 dian was that shot Stanley. He said, "I came from Coahuilla, I came after Apapas," which is Ambrosio Apapas. And I said to him, "Here." The sheriff did not mention Stanley's name. He said I come after Ambrosio, I am coming from Coahuilla and I am ging to take him to Riverside. I said to him, "That is where I am taking him to." And he took Ambrosio in his automobile. Francisco Lubo had not done anything wrong. I took him down to Riverside because he complained to me against Celso because Celso had shot him in the knee.

Q. Had you ever take- a complaint against a man for doing anything wrong on an Indian reservation to a sheriff before?

A. No sir. But if anything happens somebody killed I have to take him. If anything happens, you know, on the reservation, I have to see to that. I did not know where the United States Marshal was. I had never known him. Nobody told us where the marshal was not one of the Indian Agents. Before I left Coahuilla Mr. Stevens told me that Stanley was wounded. I did not go over to see him because I was in a hurry-t- come to Riverside.

Exception No. 95.

Q. Why didn't you go over and tell Mr. Stanley, as Indian agent, that Francisco Lubo had a complaint against his forest guard?

Counsel for defendants objected to the question on the grounds that it is not proper cross-examination That it is not material, whether the defendant went over to tell Mr. Stanley was
391 shot after it was all over. Objected to on the further ground that it is not a part of the res gestae, that it was not brought out in the direct examination. The objection was overruled by the

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court, to which ruling of the court, counsel for the defendants then and there excepted.

A. He had made complaint with me. I said that Francisco found a bullet in his shoe and gave it to me. I took it down to Riverside with me, now it is in the office over at the county jail. I think the jailer has it now.

Redirect examination by Mr. ESTUDILLO:

I made a complaint before Justice Webb in Riverside against Celso Serrano and John Largo.

Recross-examination by Mr. ROBINSON:

Q. Webb is dead now, isn't he?
A. I don't know anything about it.
Q. *U*ou don't know whethere he is d*ae*d or not?

Mr. ESTUDILLO: He is not dead, your honor, he is very much alive. He is Justice of the Peace and he is very much alive.

By Mr. ROBINSON:

Q. Did he issue a complaint against Celso Serrano?
A. Well, he issued but the government stopped it from here to Los Angeles.

BERNARDO RESVALASO, a witness on behalf of the def*nedants* testified through an English-Spanish interpreter as follows:

Direct examination.

By Mr. ESTUDILLO:

My name is Bernardo Resvalaso. I live at Soboba. I was raised there. I know Celso Serran*o*t by sight. I always talk to
392 him when I meet him. I have known him a long time. I had a conversation with him in reference to the death of Mr. Stanley last year. Celso Serrano said on the 17th of September last year that he was shooting in the direction of Stanley that he might have hit Stanley, but he did not go to do it, because Stanley was his friend, or words approximating *the* that.

After the usual admo-tion to the jury the Co*u*tt took an adjournment until Monday, March 17th, 1913.

Monday, March 17th, 1913, at 2 o*9*clock defendants in court with counsels stipulated jury present.
At this time the bullet which was testified to as having been taken from Francisco Lubo's shoe was shown to Leonicio Lugo, who said "That is the bullet." The same was offered and received as United States Exhibit No. 17.

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LEONICIO LUGO recalled.

Redirect examination.

By Mr. ESTUDILLO:

I show you these papers, they are certified copies of the complaints that were filed in Riverside before Justice Webb and which were brought out on Cross Examination. The Complaints were made by Lugo himself against Celso Serrano*t* and John Largo for assault with a deadly weapon. That matter was brought out by th- cross examinzti/n, and it was suggested that Judge Webb was dead.

We offer them as Defendants' Exhibit "A."

Papers were received and marked "Defendants' Exhibit "A."

AMBROSIO APAPAS, one of the defendants, testified on behalf of the defendants through the Interpreter as follows:

393 My name is Ambrosio Apapas. I know Pedro Casero. He is in Cahuilla, I know everybody in Cahuilla. I never went to his house in April 1912. I never owned a revolver, I never had a revolver. I did not go to Pedro Casero's two weeks before the second of May of last year with a revolver in my belt. I never go any place only when I have work taking care of my cattle. I did no*t* go to the Fiesta on the first of May of last year at Juan Costa's house. Before that, in the last of April I was at the water there, taking a bath, John Largo told me about the first of May they were going to have something.

Cross-examination.

By Mr. ROBINSON:

I never went out hunting. I never carried my father's revolver. I don't think he has got one. I have a 22 calibre rifle, it is the only fire-arm that I have and a child broke that one. I have no shot gun. My occupation is taking care of my cattle. After taking a bath I did not go to Juan Costa's house, I went home from there. On the first of May I was hunting for my cattle, they go away to forage. I went a long ways looking for them, out towards Roger's place that rocky place. I got back the night of the first of May in the evening. I did not go over to Juan Coast-'s house for the dance and the singing there; my wife and my daughter went.

Exception No. 96.

Q. Why didn't you go?

The question was objected to by counsel*s* for defendants on the grounds that it — irrelevant, incompetent, and immaterial and not proper cross examination.

The objection was overruled by the court, to which ruling of the court counsel for defendants then and there objected. At this time defendants rested.

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394 *Rebuttal.*

WILLIAM BRADFORD, a witness produced on behalf of the government, testified in rebuttal as follows:

Direct examination.

By Mr. ROBINSON:

My full name is William Bradford. My occupation is rancher and apiarist. I have a ranch in Riverside County that I ran on shares. Some calls it the Bradford Ranch and some call it the Sulphur Spring Ranch. It is owned by Mr. Tripp, but I runa it on shares. That ranch is about 6 miles from Cahuilla, that is from my house to the school house on the reservation. I was running that ranch in April and May in 1912. I knwo Pablino Lugo. I know Antonio Contreras. Antonio Contreras was working on the road at a camp there. He was not working at my place. He stayed at a camp at my place He slept in the barn. Pablino Lugo was there at the same time. He slept in the barn, with Antonio Contreras. I imagine the beds were probably 10 feet apart. Pablino Lugo was doing general ranch work on the ranch, he was plowing and harrowing and the like of that.

Exception No. 97.

Q. Did you ever see Pablino Lugo and Antonio Contreras talking there on the ranch together?

The question was objectec — by counsel for defendants on the grounds that it is incompetent, irrelevant and immaterial and not rebuttal. The objection was overruled by the court, to which ruling of the court counsel for defendants than and there *objected* excepted.

A. I have seen them talk together.

By Mr. ROBINSON:

Q. About how man- days were they together there on the ranch?
A. We-, probably 10 or 12 days, they were there pretty much off and on, you know. They were the oroad men, Mr. Contreras
395 and Mr. Clark moved their camp part of the time down the ways but I should say 10 or 12 days was *wnch* they were right there on the ranch.

I remember when Mr. Stanley was killed. They were there together just previous to the time that Mr. Stanley was killed they were there together the day before or two days, I believe. I cannot say the exact day when Pablino left my ranch, but it was the day before Mr. Stanley was killed, but I could not swear to the date, because I do not remember just the date. I did not keep any record of it. I think he left about 5 o'clock in the evening. I did not see Mr. Stanley that day.

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Cross-examination.

By Mr. ESTUDILLO:

Contreras was working on the Wilson grade. The Wilson grade is about 2 miles from my house. Pablino was not working on that grade. Pablino was working for me and had been working off and on for 25 or 30 days probably, I have no record of just the number of days. Pablino's home is on the Indian reservation. He speaks English to a certain extent. It is broken a good deal, he speaks English though.

Q. How long had Contreras been at your home, before the first of May of last year?

A. I don't know exactly, but it was whenever he started to work on the road. He had probably been there a week or such a matter or ten days before Mr. Stanley was killed.

Q. When did you see Pablino and Contreras talking together?

A. Why, I seen them in front of the barn one evening.

Q. When was that?

A. Passed a remark or two?

Q. When was that?

396 —. I don't remember the date.

Q. You did not hear what they were talking about?

A. No sir.

Q. Do you know in what language they were talking?

A. No, I was not near to them. Not near enough to hear them or to tell anything about what language they talked in.

Q. How did you happen to see them there?

A. I just saw them from the house, standing there and talking, and I think they had a horse there, and they were talking over that, I imagined. Anyway they had a horse there. I don't know what they were talking about. I never told this to anyone before because I never was asked before. There was nothing particular about them talking together that impressed it on my mind.

Q. You don't know when that was when they were talking to*h*ether do you?

A. No I don't.

Q. Was it in the morning or in the evening?

A. I would not want to say for sure, but I think in the evening. I can't say positively that it was evening or not, but I remember seeing them one time together there in front of the barn.

Q. Is that the only time you ever saw them together?

A. That is the only time I ever saw them talking together.

Q. You can't say whether it was in the night time or in the morning?

A. No, I would not want to say for sure, because I don't know.

Q. How long before the first of May was that, Mr. Bradford?

A. I don't remember the date at all, but I think they were there about a week before the trouble at Cahuilla.

Q. That is the time you saw them talking together?

A. Sometime along that time. I don't know what day,
397 whether it was the first day they came, it probably was the first day that Mr. Contreras came there with his horse, but I don't know for sure that it was that day.

Q. When did Contreras first come up there with his horse?

A. When he came to work for Mr. Clark on the road.

Q. When was that?

A. I don't remember.

Q. Was that two or three weeks before the first of May of last year?

A. Probably ten or twelve days before.

FRANK M. CLARK, a witness produced on behalf of the government testified in rebuttal as follows:

Direct examination.

By Mr. ROBINSON:

I live in Cahuilla, Riverside County California. I lived there in April and May 1912. My occupation was then stock raising, that is my occupation now. I am road supervisor we don't really call it an occupation, on account of it being such a small job, just through the winter season for a few month-. I was working there on the first of May. I know where the Bradford Ranch is. I was 2 of 3 miles over at Bradford Ranch on the Wilson Creek. I was camping at that time at the Bradford Ranch. I know Antonio Contreras, he was working for me then. I know Pablino Lugo. Pablino was working for Bradford. I know where he slept, in the barn. Contreras slept in the barn. These two were there together about a week, that is at one time, five or six days, not less than five days at least. I would say something near a week to my knowledge. I remember the day before Mr. Stanley was killed. I talked with him on the Wilson Grade. I saw Antonio Contreras and Pablino
398 Lugo together at the Bradford Ranch before I saw Mr. Stanley on the road that day. They were near the house. I saw them in the morning and evening we were away through the day. I saw them talking together. Pablino Lugo was not at Bradford's Ranch that night after Mr. Stanley went up. I know Pio Lugo, I have known him for about 21 years. I know his people and other people at the Cahuilla reservation where he lives. His reputation for peace and quiet is bad.

Cross-examination.

By Mr. ESTUDILLO:

I do not live on the reservation. I live adjoining the reservation.

Q. Your fence extends to what the Indian- claim as their lands?

A. I believe the Indians claim that, yes sir.

Q. You have had more or less trouble with them?

A. And I claim it is my land.

Q. And you have had more or less feeling against them for the last 20 years?

A. Not at all, in that respect. I have had some difficulty about my boundaries, but not with the Indians. They say I am on their land. According to the survey it is not their land I have a patent to the land. I base my statement that Pio Lugo's reputation for peace and quiet is bad, on the fact that he drew a hammer one day to hit me. And he put another American citizen there in the little jail on the Indian reservation. And he has quarreled with others there in regard to their stock around the reservation, when they were not on the reservation?

Q. Did he quarrle with you in regard to your stock?

399 A. I had my stock fenced off, off the reservation, but they have corraled or put my cattle in there—yes, in theirs corrale and charged me trespass on the Indian reservation.

Q. When they got into the reservation, that is when your cattle got into the reservation?

A. Pio Lubo put a bunch of my cattle, when they were on the county road—they had *went* down and was in the count- road and he drove them down and put them into his pasture.

Q. How long is that?

A. Oh, that was about 12 years ago.

Q. You do not feel very friendly towards him, do you Mr. Clark?

A. We have been friend- right along. I can't say that I have been friends with the Indians there, and Pio Lubo has worked for me different times. I never had any trouble.

Q. He has been working in Hemet for the last 10 or 12 years, hasn't he?

A. Oh yes, off and on. So does Pablino Lubo, they all do.

JOHN LARGO, a witness previously sworn and examined on behalf of the government having been recalled in rebuttal testified as follows:

Direct examination.

By Mr. ROBINSON:

Exception No. 98.

Q. On the evening of May first, the evening Mr. Stanley came to Cahuilla, did you go with him over to Pablino Lubo's house?

The question was objected — by counsel for defendants, as not proper rebuttal and on the grounds that it — irrelevant, incompetent and immaterial.

The objection was overruled by the court to which ruli*j*g of the court counsels for defendants then and there excepted.

400 A. Why, I was over at Juan Costa's and then Mr. Stanley and Mr. Stevens and Pablino and Mr. Pederson and——

The COURT: If you d-sire to put this as an impeaching question you had better put the question to him directly.

By Mr. ROBINSON:

Q. Well, over there that evening. Did Pablino tell Mr. Stanley that some money was due to him for the expense of his son going

to Carlisle? And that Mr. Stanley had the money and should give it to him? And did Mr. Stanley say he had no money for him but would write to Washington. And did Pablino say "You are a liar"?

A. Yes that is what he said.

Cross-examination.

By Mr. JOHNSTONE:

Pablino said to Mr. Stanley that he was a liar, the first time he promised to pay the money back, but he never paid. The first thing Pablino said to Mr. Stanley that evening was that he wanted the money. He wanted $20.00, but Mr. Stanley told him that he had not got the money yet. Pablino came there about dark, about 6 o'clock. That was on the first of May and Mr. Stanley said that he did not have any money that he would have to write to Washington for it, and after Pablino said "You are a liar" he did not go away, I was there with Him. Mr. Stanley told him that he was going to write again. He said he had written once, but he never got an answer, that he was going to write again, and Pablino told him that that he was going to write too, through Mr. Friedman. Pablino was kind of angry. He wanted the money, and that is why he got angry. Mr. Stanley said he had not got the money yet. Mr. Stanley spoke in the English language. I interpreted it for him.

Exception No. 99.

And you interpreted what Pablino said to Mr. Stanley?

A. Yes.

Q. Pablino cannot understand English, can he?

401 A. No, he can't understand, that is why Mr. Stanley called me to interpret.

Councels for defendants mover the Court to strike out the *the* statement of the witness as to the conversation on the ground that it was his statement and not binding by the defendant Pablino. Motion was denied by the Court, to which ruling of the court counsel for defendant then and there excepted.

CHARLES VANDEVENTER, a witness on behalf of the government, testified *on* rebuttal as follows:

Direct examination.

By Mr. ROBINSON:

My occupation for about 3 or 4 years has been mining. I am Forest Guard at the Kenworth District. That is near the Santa Rosa Indian reservation. I know Ignacio Guache. I have know- him over there on the Santa Rosa Reservation.

Q. And di- you see and t-lk with him over there, about two weeks after the first or second of May?

A. Yes sir.

Q. In that conversation did you discuss the death of Mr. Stanley?

A. Yes sir.

Exception No. 100.

Q. Did he tell you at that time that he knew before he went away that Mr. Stanley would be killed?

Objected to by counsels for defendants on the grounds that is is incompetent, irrelevant and immaterial too remote from the date of the action *in* part of the res gestæ. It is a declaration by a person not a defendant in this case when none of the defendants
402 were present and it is not proper rebuttal. The objection was overruled by the court, to which ruling of the court, counsels for defendants then and there excepted.

A. He says there is something going to be doing.

FRANK A. THACKERAY, re-called on behalf of the government, testified on rebuttal as follows:

Direct examination.

By Mr. ROBINSON:

My occupation is superintendent of an Indian school and reservation. My occupation in May 1912, was Supervisor of the Incian Schools in charge of the Indian works in the States of Arizona, and Nevada and California. I have visited the Cahuilla reservation on the fourth of May after Mr. Stanley was killed. I had a conversation at that time with Ignacio Costa. At that time he showed me a spot near the stove in the school room and said that that was where Ambrosio Apapas stood when he fired the shot after Pederston and Stevens and which went into the wall.

Cross-examination.

By Mr. JOHNSTONE:

That was on the fourth of May, 1912?

Q. After Ignacio told you that did you tell the District Attorney?

A. I do not think I ever told the District Attorney about it until Ignacio was on the stand, and I told him where he sits. I did not tell the District Attorney about it. I included it in my report to the Department and he had a copy of that report. It is not a fact that I went to that meeting and brought these men along with me to ask Ignacio Costa if certain things were so to prepare to go on the stand and contradict him if he said it was not so. I did not know
403 at that time that I would be called as a witness.

It was stipulated that after the case is closed the government may with-draw the documents that came from the files of Washington and substitute copies for them after being approved by counsels for the defendants. It was also stipulated that whenever an objection was made by the defendants and the Court ruled upon it that an exception was taken then and there to the ruling of the Court. Thereupon plaintiff announced that its case was closed.

This was all the evidence in the case and after the argument of counsel both of the Plaintiff and the Defendants the Court charged the Jury as follows:

404 In the District Court of the United States in and for the Southern District of California, Southern Division.

No. 518. Criminal.

UNITED STATES OF AMERICA, Plaintiff,
vs.
AMBROSIO APAPAS et als., Defendants.

Instructions to the Jury.

Gentlemen of the jury, you have listen*d*ed patiently to the testimony and arguments of counsel in this case, and now it becomes my duty to lay down certain rules of law for your guidance in your deliberations. When I have done this, the responsibilities of the court will end and yours will begin.

I will first direct your attention to certain provisions of the Federal Penal Code of 1910. Section 328 of that Code provides, among other things, that all Indians committing against the person or property of a-other Indian or other person, any of the following crimes, namely, murder, manslaughter, rape, assault with intent to kill, assault with a dangerous weapon, arson, burglary and larceny, within the boundaries of any state of the United States, and within the limits of any Indian Reversation, shall be subject to the same laws, tried in the same courts, and in the same manner, and be subject to the same penalties as are all other persons committing any of the above crimes within the exclusive jurisdiction of the United States.

I now charge you, as a matter of law, that the schoolhouse where William H. Stanley received the mortal wound which resulted in his death, on the 3rd day of May, 1912, is within a tract of land set aside by order of the President of the United States for the use of certain Indian tribes, and is an Indian reser-
405 vation within the meaning of the law. I further instruct you that if you find from the testimony that these defendants are Indians, and that at the time of the homicide they were living on the Indian reservation in question in the charge of an Indian agent or superintendent, they are Indians within the meaning of the law, and if they committed the crime of murder on the reservation this court has full and complete jurisdiction to try the offense and to punish the offenders.

Section 273 defines the crime of murder when committed within the exclusive jurisdiction of the United States as follows: "Murder is the unlawful killing of a human being with malice aforethought. Every murder perpetrated by poison, lying in wait, or any other kind of wilful, deliberate, malicious, and premeditated killing; or committed in the perpetration of, or atttempt to perpetrate, any arson, rape, burglary,or robbery; or perpetrated with a premeditated design unlawfully and maliciously to effect the death of any human

being other than him who is killed, is a murder in the first degree. Any other murder is murder in the second degree."

Section 332 provides, to wit: "Whoever directly commits any act constituting an offense defined in any law of the United States, or aids, abets, counsels, commands, induces, or procures its commission, is a principal."

Section 275 provides that every person guilty of murder in the first degree shall suffer death, but section 330 contains the further provision that in all cases where the accused is found guilty of the crime of murder in the first degree, or rape, the jury may qualify their verdict by adding thereto "without capital punishment;" and whenever the jury shall return a verdict so qualified, the person convicted shall be sentenced to imprisonment for life.

I will only say in reference to this latter provision
406 that in the event you find the defendants, or either of them, guilty of the crime of murder in the first degree, the question of whether your verdict shall be qualified as above, is addressed exclusively to your discretion. Upon that question I am not permitted to either advise or instruct you. These are all the statutory provisions I deem it necessary at this time to call to your attention.

The indictment in this case contains three counts, but the three counts charge only a single crime in different forms. Without reading the indictment to you at length at this time, I will state in general terms that the first count charges that these defendants did, on the 2nd day of May, 1912, within the limits of the Cahuilla Indian Reservation, in the southern division of the southern district of California, and within the jurisdiction of this court, feloniously, wilfully, deliberately, premeditatedly, and of their malice aforethought, kill and murder William H. Stanley, contrary to the form of the statute in such cases made and provided, and against the peace and dignity of the United States.

The second count charges that at the same time and place, these defendants, with a revolver, held in the hand of the defendant Apapas, did feloniously, wilfully, deliberately, premeditatedly, and of their malice aforethought, kill and murder William H. Stanley, contrary to the form of the statute in such cases made and provided, and against the peace and dignity of the United States.

The third count charges that at the same time and place, the defendant Apapas did feloniously, wilfully, deliberately, premeditatedly, and of his malice aforethought, kill and murder William H. Stanley, and that the defendants other than Apapas,
407 did feloniously, wilfully, deliberately, premeditatedly and of their malice aforethought, aid and abet the defendant Apapas in the commission of said crime, and did feloniously, wilfully, deliberately, premeditatedly, and of their malice aforethought, counsel, command, induce and procure the defendant Apapas to commit said crime, contrary to the form of the statute in such cases made and provided, and against the peace and dignity of the United States.

The indictment, gentlemen, is but the formal accusation presented by the Government against the defendants. No presumption of guilt

arises from the fact that the indictment has been returned, and the indictment of itself is no evidence that the defendants, or either of them, are guilty of the crime charged, and must not be treated by you as such. To this indictment the defendants, and each of them, have interposed a plea of "not guilty." This plea places in issue every material averment of the indictment, and casts upon the Government the burden of proving every such averment to your satisfaction, and beyond a reasonable doubt. In this connection, I charge you that a reasonable doubt is such a doubt as will cause a reasonable, prudent and considerate man to hesitate or waver in the gravest and most important concerns of life before acting upon the truth of the matter charged or alleged. Such a doubt may arise from the evidence, or from the lack of evidence. On the one hand you may not return a verdict of guilty on mere probabilities or suspicions, however, strong, nor on the other hand should you be swayed by doubts which are purely imaginary and capricious. If from a fair and candid consideration of all the testimony you have an abiding conviction of the guilt of the accused, to the exclusion of every reasonable doubt, as I have defined that term to you, it will be your duty to act upon it and return a verdict of guilty. If *If* you entertain such a doubt, the defendants are entitled to the full benefits thereof, and your verdict must be "not guilty."

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I further instruct you that every person accused of a public offense is presumed in law to be innocent of the crime charged until his guilt is established to the satisfaction of the jury, and beyond a reasonable doubt. This presumption is not a mere fiction to be disregarded by you at pleasure. It is a substantial part of the law of the land. Is accompanies these defendants throughout the trial, and abides with them until its last vestige is destroyed by the testimony introduced on the part of the Government, and until you are satisfied beyond a reasonable doubt, of their guilt, notwithstanding the presumption of innocence with which the law surrounds them.

There is no claim on the part of the Government that any of the defendants, other than the defendant Apapas, fired the fatal shot that caused the death of William H. Stanley, and you will perhaps understand the case the better if I first instruct you as to the law by which you will determine the guilt or innocence of the principal defendant, and later explain to you what acts or conduct on the part of the other defendants will connect them with the crime charged.

As you have observed from the reading of the statute, unlawful killing of a human being with malice aforethought, constitutes murder. Malice aforethought is a term in law to designate the wicked and mischievous intent with which a man wilfully does a wrongful act, and it may be inferred from acts committed or words spoken. Express malice exists where a murder is committed with sedate, deliberate mind on the part of the murderer, and in pursuance of a formed design to kill the person killed. The mind of the murderer need not be entirely free from excitement in order to bring it within the meaning of the term "deliberate," for if it be in such condition as to admit of reflection upon the character of the act, then it is deliberate within the meaning of the

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law. You will also observe that the crime of murder is divided into two degrees. In order to constitute murder in the first degree, the killing must be wilful, deliberate, malicious and premeditated. The term "wilful" as used in this statute, means intentionally, or purposely, that is, not accidental, and in this connection I charge you that every sane man is presumed to intend the natural or necessary consequences of his voluntary acts, and this presumption will always prevail unless the jury entertain a reasonable doubt, from all the circumstances, whether such intent did, in fact, exist.

The term "deliberate" means in a cool state of the blood—not in a sudden passion—engendered by a lawful or some just cause of provocation. Malice within the meaning of the law, includes not only anger, hatred and revenge, but every other unlawful and unjustifiable motive. The term "malice" has in law a two-fold significance. There is what is known as malice in fact, or express malice, and malice in law, or implied malice. Malice signifies a wrong act, intentionally done without justification or legal cause. Express malice is that deliberate intention to take away unlawfully the life of a fellow-creature which is manifested by external circumstances capable of proof. Malice may be implied when no considerable provocation appears and when all the circumstances of the assault show an abandoned and malignant heart. Malice is not confined to ill-will toward an individual, but is intended to denote an action following from any wicked or corrupt motive. A thing done with a wicked mind, and attended with such circumstances as plainly indicate a heart regardless of social duties, and fully bent on mischief, indicates malice within the meaning of the law; hence malice may be found or inferred from any deliberate and cool act against another, however, sudden, which shows an abandoned and malignant heart.

"Premeditated" means determined upon before-hand. It means that there was a design to kill before the act of killing took place.

I further instruct you that the terms "deliberate" and "premeditated," as used in the statute, mean simply this; That the slayer must intend, before the fatal blow is delivered, although it be only for an instant of time before, that he will strike at the time he does strike, and that death will be the result of the blow. Or, in other words, if the slayer had any time to think before the act, however, short such time may have been, and did think, and strike the fatal blow as a result of the intention to kill, thus formed in his mind, and death ensued, it would be deliberate and premeditated killing within the meaning of the law—it matters not how brief the period—if the party has turned it over in his mind, and weighed and deliberated upon it. The law does not, and can not, define any precise period for the formation of any such design. It may take place at any time before the fatal blow was struck, but if it exists in advance of the killing, the requirements of the law are satisfied.

With these definitions for your guidance, if you are satisfied beyond a reasonable doubt that the defendant Apapas killed William H. Stanley in the manner and form as charged in the indictment, and that such killing was wilful, deliberate, malicious and premedi-

tated, you will find the defendant Apapas guilty of murder in the first degree. If you are not so satisfied, but are satisfied beyond reasonable doubt that he killed the deceased with malice aforethought, but without deliberation and premeditation, you will find him guilty of murder in the second degree, and if you entertain a reasonable doubt as to his guilt, in either degree, you will return a verdict of "not guilty."

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I will further add here, gentlemen, though somewhat out of order, that if you find from the testimony that the policeman Largo made an assault on the defendant Cornelio Lubo with a revolver, and attempted to shoot him, the defendant Lubo had a legal right to resist the attack and the other defendants present had a like right to seize upon and disarm the assailant, using such force as was deemed reasonably necessary for that purpose. Of course, whether the policeman Largo made a felonious assault on this defendant, as claimed by the defense, or whether he was *siezdd* upon, assaulted and disarmed, as claimed by the Government, is a question of fact for your consideration.

I further instruct you that if you find from the testimony that the deceased was killed accidentally by one of the numerous shots exchanged at the school-house that morning, your verdict must be not guilty. In other words, before reaching a verdict of guilty as to any of the defendants, you must be satisfied beyond a reasonable doubt that the deceased was shot and killed by the defendant Apapas purposely and with malice aforethought.

If you find the defendant Apapas not guilty, a like verdict will follow as to the other defendants, as a matter of course, but if you find him guilty of mur-er, in either degree, it will then become your duty to consider the case as to the remaining defendants. Ordinarily, a person is amenable to the criminal law for his own acts, and not for the acts of others. But there are well defined exceptions to this general rule. One exception is where a criminal act is committed in furtherance of the object of a conspiracy, and the other is where one person aids, abets, counsels, commands, induces or procures the commission of a crime by another. A conspiracy is generally defined as an agreement or combination between two or more persons to commit some unlawful act by some unlawful means. Such a combination or agreement is usually proved by circumstantial evidence. "All the text-books agree that the evidence in proof of a conspiracy may be, and from the nature of the case generally must be, circumstantial. All concerted action to violate the law is secret, and is ordinarily shown by separate, independent acts tending to exhibit the common design. The common design is the essence of the charge, and to prove it it is not necessary to prove that the parties came together and actually agreed in terms to have that design and to pursue it by common means. The jury will be justified in inferring the existence of a conspiracy when the Government satisfies you beyond a reasonable doubt by the testimony of credi*ll*e witnesses that any two or more of the parties charged aimed by their acts to accomplish the same unlawful purpose or ob-

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ject—one performing one part and another another part of the same, so as to complete it, although they never may *never* come together to concert the means or to give effect to the design. Nor is it necessary that the conspiracy should originate with the persons charged. Every one acting in a conspiracy at any stage of the proceedings, with knowledge of its existence, is regarded in law as a party to all acts done by any of the other parties before or afterwards in furtherance of the common design."

But, gentlemen of the jury, whether the conspiracy is established by direct or by circumstantial evidence, it must be established to your satisfaction and beyond a reasonable doubt before you can
413 find any of the defendants guilty on the basis or theory that the deceased was killed in furtherance of the objects of a conspiracy, and where circumstantial evidence is relied on to establish the conspiracy, the circumstances themselves must be established and proved beyond a reasonable doubt, and when so established, they must not only be consistent with the existence of the conspiracy, but they must be inconsistent with any other reasonable hypothesis. If you find from the testimony in this case that there was a conspiracy between two or more of these defendants to kill or do bodily harm to the deceased Stanley, the next question will be, was the fatal shot fired in furtherance of the object of that conspiracy? Upon that question I charge you as follows: The general rule is well settled that where several parties conspire or combine together to commit an unlawful act, each is criminally responsible for the acts of his associates or confederates, committed in furtherance of any prosecution of the common design for which they combined. In contemplation of law, the act of one is the act of all. Each is responsible for everything done by his confederates, which follows incidentally in the execution of the common design as one of its probable and natural consequences, even though it was not intended as a part of the original design or common plan. Nevertheless, the act must be the ordinary and probable effect of the wrongful act, substantially agreed on so that the connection between them may be reasonably apparent and not the fresh and independent product of the mind of one of the parties outside of or foreign to the common design. Even if the common design is unlawful, and if one member of the party departs from the original design, as agreed upon by all the members, or does an act which was not only not contemplated by those who entered into the common purpose, but was not in furtherance thereof, and was not the natural or legitimate consequence of anything
414 connected therewith, the person guilty of such act, if the act was in itself unlawful, would alone be responsible therefor. As I have instructed you, acts and declarations of each conspirator in furtherance of the object of the conspiracy are in contemplation of law the acts of all, but this rule only applies while the conspiracy lasts. After the object of the conspiracy has been consummated or abandoned, the acts, or declarations of any one of the conspirators outside of the presence of the others, is in no manner binding upon them. If, therefore, you find from the testimony that the defendant Apapas is guilty under the instructions I have given you, or that he

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conspired with one or more of the other defendants to commit some unlawful act against the deceased Stanley, or that the deceased was killed in furtherance of the object of the conspiracy, or in the execution of the common design of the conspirators, or if his death was the probable and natural consequence of the conspiracy, then you will find all the defendants so conspiring guilty of the principal offense.

If you entertain a reasonable doubt as to the existence of a conspiracy among the defendants to kill or do bodily harm to the deceased, or as to whether he was killed in furtherance of the objects of that conspiracy, or as the natural or probable consequence of the conspiracy, you will find the defendants, other than the defendant Apapas, not guilty, unless you also find from the testimony beyond a reasonable doubt that they aided, abetted, counseled, commanded, induced, or procured the commission of the crime by the defendant Apapas. The mere presence of the other defendants at the time and place where the homicide was committed, their mere failure to prevent it, their mere silence or their mere acquiescence in the killing will not warrant their conviction as accomplices. Before you can return a verdict of guilty against them you must be
415 satisfied beyond a reasonable doubt that they aided, abetted, counseled, commanded, induced or procured the commission of the crime by the defendant Apapas. It is not indispensable, however, that they should have committed any overt act. If they were present at the time and place of the homicide by agreement with Apapas, to aid him in the killing of Stanley, and if *any* knowledge of their presence emboldened and encouraged Apapas to commit the crime, and to strike the fatal blow which killed Stanley, their connection with the crime is established and the law declares all such participants guilty as principals. It is for you to say from a consideration of all the testimony which, if any of the defendants, aided, abetted, counseled, commanded, induced or procured the commission of the crime, if any was committed, under the instructions I have given you, and to return a verdict accordingly. Some of the defendants may be guilty as conspirators or accomplices, while others may not, according to the facts as you find them.

I further instruct you that it is not indispensable that a motive for the commission of the crime be shown, but the existence or nonexistence of a motive is a question of fact which must be determined by the jury from a consideration of all the evidence in the case and as a circumstance tending to show the guilt or innocence of the accused. When the evidence fails to show a motive for an assault or to commit a crime, this is a circumstance in favor of the innocence of the party accused, and in this case if the jury find upon a careful examination of all the evidence that it fails to show any motive, cause or reason on the part of the defendants to assault or murder the deceased, then you should consider this fact in determining the truth or falsity of the claim made by the Government that
416 the defendants killed the deceased. Much of the testimony offered in this trial is what is known in law as circumstantial evidence, and to warrant a conviction on circumstantial evidence, each fact necessary to the conclusion sought to be established must

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be proved by competent evidence beyond a reasonable doubt, and all the facts necessary to such conclusion must be consistent with each other and with the main fact sought to be proved, and the circumstances taken together must be of a conclusive nature leading on the whole to a satisfactory conclusion and producing a reasonable and moral certainty that the accused, and no other person, committed the offense charged. The mere union or the ultimate probability of circumstances, each of an imperfect and unconclusive character, will not justify a conviction. They must be circumstances to generate and to justify full belief according to the standard rule of certainty. It is not sufficient that they coincide with and render probable the guilt of the accused, but they must exclude every other reasonable hypothesis. No other conclusion but that of the guilt of the accused must fairly and reasonably grow out of the evidence, and the facts must be absolutely incompatible with innocence, incapable of explanation upon any other reasonable hypothesis than that of guilt.

You are instructed that evidence of previous good character is competent evidence in favor of the defendant or defendants, or either of them, in this case as tending to show that the defendant Apapas and the defendants named in the indictment would not be likely to commit the offense charged against the said Apapas and against the other defendants named in the indictment, and, if in this case, you believe from the evidence that prior to the commission of the offense charged in the indictment the defendant Apapas, or the defendants, or either of them, had always borne a good character for peace and quiet among their acquaintances and in
417 the neighborhood where they lived, then it is a fact proper to be considered by you with all the other evidence in the case in determining the question of his or their guilt or innocence.

You are instructed that in all criminal cases the law permits the defendant to introduce evidence concerning his good reputation upon the points of the case involved in the special case under consideration; and in this case the law permits the defendants to introduce and they have introduced evidence of their good character as to peace and quietness, and you are instructed that if such a character has been satisfactorily shown, it is a fact which must be taken into consideration in determining the guilt or innocence of the defendants and you are instructed that the reputation of the defendants in the respects above indicated may of itself be sufficient to create in your minds a reasonable doubt, and if it does create such reasonable doubt as to their guilt, then you should give the defendants the benefit of the doubt and acquit them.

You, gentlemen of the jury, are the sole and exclusive judges of the facts in this case and of the credibility of the witnesses. In arriving at your verdict you will carefully consider and compare all the testimony. You will observe the demeanor of the witnesses upon the stand, their interest in the result of your verdict, if any such interest is shown, their knowledge of the facts in relation to which they have testified, their opportunity for hearing, seeing, and knowing those facts, the probability of the truth of their testimony, their

bias or prejudice, or the absence of either of those qualities, and all the facts and circumstances given in evidence or concerning the witnesses at the trial.

I further instruct you that if you find from the testimony that any witness has wilfully testified falsely to a material fact in the course of the trial, you are at liberty to disregard the testi-
418 mony of such witnesses or witness entirely, except in so far as he or they may be corroborated by other credible testimony or by other known facts in the case.

I further instruct you that if you find from the testimony that any of the witnesses on the part of the Government are officers in the Indian service, you have a right to take that fact into consideration in weighing their testimony, as well as their connection with the commission of the alleged offense, if any such connection is shown. You will understand, of course, that the fact that these defendants are Indians has no bearing upon this case, except in so far as the jurisdiction of the court is dependent upon it. They are subject to the law like the rest of us. They are not above its commands, — they are not beneath its protection. "Thou shalt not kill" is law to them as it is to us. At the same time every guarantee of life and liberty contained in the constitution and laws of the United States, and in the common law of England is their heritage as well as ours. They are amenable to the law and are protected by the law.

Under the testimony in this case, it will be competent for you to return any one of four verdicts against any one or more of the defendants, and the clerk has prepared forms of verdict accordingly.

The first form of verdict finds the defendants guilty as charged in the indictment. There is a blank left in the form after the word "defendant," and if you find but one of the defendants guilty, you will insert his name in the blank left in the verdict. If you find more than one guilty, you will insert an "s" after the word "defendant" and write in the body of the verdict the names of the defendants whom you find guilty. This form of verdict carries with it the sentence of death.

The second form of verdict is in all respects similar to the first, except it includes the words "without capital punishment,"
419 and you will fill in the blanks in the same manner.

The third form of verdict is the same as the others except it contains a finding of murder in the second degree.

The last form submitted to you finds the defendants not guilty.

Gentlemen, you may now retire and consider of your verdict, and true deliverance make between the Government of the United States and the prisoners at the bar who have been charged.

420 *Defendants' Instruction Asked and Refused.*

You are instructed, gentlemen of the jury, that the defendant Cornelio Lubo, was not required by law to report to William H. Stanley on the 2nd day of May, 1912, unless you find from the evidence that he had been summoned by warrant or due process of

law to do so and unless you find that he had violated some law, and you must find it from the evidence, he was not required to stay at the school building on the said second of May, and his leaving constituted no breach of law that justified his detention. And if you find from the evidence that said Cornelio Lubo violated any law on said date, and had not been summoned by warrant as required by law to report to the said William H. Stanley, his leaving the school-house was justified and the attempt of the policeman John Lugo to bring him back into the school-house constituted an assault on the said Cornelio Lubo, and he was justified in resisting the attack of said John Largo, and if you find that in the attempt of John Largo to bring said Cornelio back to the school-house, the said John Lugo drew his pistol and shot at said Cornelio Lubo, the said shooting constituted an assault on said Cornelio Lubo, and the persons present were justified in disarming said John Lugo and placing or attempting to place him under arrest.

Exception No. 101.

Counsel for defendants excepted then and there to the court's instructions and to the foregoing instruction, which was refused by the court. *Counsel for defendants then and there*

421 The jury thereupon retired to consider their verdict, and having returned into court, a verdict of guilty of murder in the second degree against Ambrosio Apapas, Cornelio Lubo, Francisco Lubo, Pablino Lubo, Pio Lubo, and Leonicio Lugo, on the twenty-first day of March, 1913, the said defendants herein named afterwards, to wit: On the 27th day of Marhc, 1913, moved the court to set aside the said verdict and grant defendants a new trial.

422 *Motion for New Trial.*

THURSDAY, *March* 27, 1913, 10:30 *O'clock a. m.*

Defendants Ambrosio Apapas, Cornelio Lubo, Francisco Lubo, Pablino Lubo, Pio Lubo and Leonicio Lugo in court with counsel.

Mr. ESTUDILLO: May it please the court, the defendants now make the following motion for new trial (Reading):

"Come now the defendants Ambrosio Apapas, Cornelio Lubo, Francisco Lubo, Pablino Lubo, Pio Lubo and Leonicio Lugo, and move the court for a new trial in said action on the following grounds:

1. That the jury received evidence out of court other than that resulting from a view of the premises.

2. That the verdict was decided by lot and by means other than fair expression of opinion on the part — all the jurors.

3. On account of errors of law arising during the course of the trial and excepted to by the defendants.

4. That the said verdict is contrary to law.

5. That the said verdict is contrary to the evidence and is not sustained thereby.

6. On account of misconduct of the jurors during the trial.

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7. On account of misconduct of the attorney representing the plaintiff in the case.

8. On account of newly discovered evidence material to the defendants and which they could not with reasonable diligence have discovered and produced at the trial."

(Motion filed.)

Mr. ESTUDILLO: The ground there assigned as misconduct of the jury is on account of the jury receiving and reading newspapers while sitting and deliberating upon their verdict in this case.

At this time I ass-me a stipulation will be entered into that a certain article published in the Los Angeles Times—which
423 I will read to the Court—was read by the Jurors. Particularly Burgess, Cline, Mott and Leach.

The COURT: If it was prejudicial, of course, if only read by one of them it would be a ground for a motion for a new trial as much as if it had been read by all.

Mr. ESTUDILLO: These men acknowledged the fact yesterday in the presence of the District Attorney. Now will it be stipulated?

Mr. ROBINSON: We will stipulate the fact is as counsel stated, that jurors acknol*w*-dged yesterday that they did read the article in the Jury room and that the paper was in the jury room, before they had arrived at a verdict and while the verdict was within their control.

It was stipulated that the following is the article, identified as follows: "It is on page three of part two of the Los Angeles Times of Friday morning, Mar*c*h 21, 1913 in the firs- column, on the left-hand sice, headed "Jury Still Out in Indian Trial."

Mr. ESTUDILLO: "Fate *I*f Coahuilla Bucks in Doubt Over Night." I now offer this paper in evidence, and will read it to the Court (Reading):

"A federal jury is *i*ndeavoring to reach a verdict in a case of a number of Indians from the Coahuilla reservation in Riverside County charged with the killing of the late superintend*a*nt William H. Stanley last May. The fate of the bucks was put in the jurymen's hands at eleve*n* o'clock yesterday morning and at five o'clock in the afternoon they had not yet agreed. Court was adjourned until 10:30 this morning. The accused are: Ambrosio Apapas, Francisco Lubo, Charley Arenas, Patrick Casero, Agapito Cornelio, Pio, Cervantes and Pablino Lubo, and Leonicio Lugo. United States District Judge Rudkin in his *chag* charge gave particular attention to the definition of the law on the subject of con-
424 spiracy and just what is necessary to establish that allegation against the defendants. He *a*mphasiced that statement that the jury should consider the evidence in the case without regard to whether the prisoners were Indians or white men, as there is but one law for all. At four o'clock the jurors sent word to Judge Rudkin that they desired additional instructions. Later information was brought down that they would soon agree, but at five o'clock another message was sent that they had not yet agreed, and Judge Rudkin adjourned until this morning at 10:30. It is believed Ambrosio Apapas will be found guilty under the indict-

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ment, but there is much doubt as to the ability of the jurors to agree on the conspiracy charge against the others, with the possible exception of Leonicio Lugo and Francisco Lubo. Other indictments still remain against the defendants. Apapas and his fellow Coahuillans must answer for making an assault with intent to murder Celso Serrano, a forest guard, Francisco Lubo for assault with a deadly weapon upon Celso Serrano, (all ten for making an assault with a deadly weapon upon Celso Serrano), and striking and beating John Largo, and Indian policeman. (Article filed.)

Mr. ESTUDILLO: We have the affidavit of Apapas himself, which is as follows (Reading):

"Ambrosio Apapas, being duly sworn, deposes and says that he is one of the defendants in the above entitled *cuase*; that on the 13th day of March, during a recess of the court; the Jury was excused and stepped outside of the court-room into the hall; that while out in the hall affiant saw four of the members of *te* the said Jury talking to Francis Swayne; that he does not know the names of the jurors, but has been informed that three of them were Jurors Houser, Skellenger and Ignacio Mott, that he does not know the name of the other juror, but believes it to be W. H. Cline.
425 Affiant states on information and belief that the conversation of the said jurors with the said Francis Swayne was in reference to the case. Affiant further states that Francis Swayne was a witness for the plaintiff in the above-entitled cause."

(Affidavit filed.)

It was stipulated that the jurors mentioned in the affidavit admitted that they had talked to Mr. Swayne, but that they had not talked about the case. But in reference to some land in Utah. That part of the affidavit which alleges on information and belief that the conversation had by the jurors to Swayne is substantially withdrawn, but not the fact that the jurors were talking to a witness of the prosecution.

Mr. ROBINSON: There is no counter affidavit. The stipul-*toon* counsel made as to one affidavit is sufficient for all our purposes.

The COURT: The stipulation as to the newspaper article and as to *to* what transpires to this witness.

Mr. ROBINSON: Yes sir, practically there is no contest as to any of these matters, that I know *off*.

Misconduct of the district attorney. Mr. Robinson made the following remarks, which the defendants assigned as errors in the case.

The result of that plan if carried out as it was started, would probably have been that Stanley would have been humiliated he would have *reen* ignominiously treated and taken to the edge of the reservation and told to get off and stay off; but instead of Stanley turning up, as they had expected, as the first one on the scene, the policeman turned up; they had to be disposed of, and were disposed
426 of, and as soon as they were, the most natur*la* thing in the world for this man who went there so coolly and calmly and collected, a man who knew exactly what he did according to the testimony of those witnesses, was to turn to the object of their hatred. St-nley was standing there in the room and did nothing. — turned

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to the object of their hatred. His blood was inflamed, and the plot was on foot, and they had taken the first steps, and in the rush of it he naturally and instinctively turned to the man they hated and had planned to malign and abuse, and seeing him there, went after him with his gun.

Mr. ESTUDILLO: I do not like to interrupt counsel, but the evidence does not justify the statement that these men hated Mr. Stanley at all, and we take exception to that remark.

Mr. ROBINSON: That is a matter of construction of the evicence, your honor.

The COURT: The jury will be guided solely by the testimony, and any statements made by counsel or by the court outside of the testimony will be disregarded by them.

Mr. ROBINSON: Not disregarded as argument, your honor?

Mr. ESTUDILLO: And the plan to drive him out and drag him out has not been borne out by the evidence.

Mr. ROBINSON: Your honor does not mean the jury to understand they will pay no attention to what I say now as argument?

The COURT: I say, any fact stated outside of the record and not supported by the testimony will be disregarded by them.

Mr. ROBINSON: I say it is purely a matter of construction.

(Argument resumed.)

427 Thereupon defendants tender this, their bill of exceptions, to the action of the court, in the various particulars therein set out, which is signed in open court, sealed and made a part of the record in this case.

The 7th day of July, 1913.

FRANK H. RUDKIN,
Trial Judge.

MIGUEL ESTUDILLO,
Att'y for Def'ts.

It is hereby stipulated that the foregoing bill of exceptions contains a full, true and correct statement of the evidence and proceedings in the above entitled case.

_____,
Attorney for U. S. Government.
MIGUEL ESTUDILLO,
S. M. JOHNSTONE,
Attorneys for Defendants.

Received copy of proposed Bill of Exceptions this 2nd day of June 1913.

A. I. McCORMICK, *U. S. Att'y;*
DUDLEY W. ROBINSON,
Ass't U. S. Att'y;
Attorneys for U. S. Government.

428 (Endorsed:) In the District Court of the United States, Southern District of California, Southern Division. The

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United States of America, Plaintiff, v. Ambrasio Apapas et al., Defendants. 518 Crim. Proposed bill of exceptions. Filed Jun- 2, 1913, at 30 min. past 3 o'clock, P. M. Wm. M. Van Dyke, Clerk, Murray C. White, Deputy. Transmitted to this Office and filed as Engrossed Bill of Exceptions Jul- 11, 1913. Wm. M. Van Dyke, Clerk, by Chas. N. Williams, Deputy Clerk.

429 In the District Court of the United States, Southern District of California, Southern Division.

THE UNITED STATES OF AMERICA, Plaintiff,

vs.

AMBROSIO APAPAS, CHARLEY ARENAS, PATRICK CASERO, AGAPITO LUBO, CORNELIO LUBO, FRANCISCO LUBO, PABLINO LUBO, PIO LUBO, CERVANTES LUBO, and LEONICIO LUGO, Defendants.

Petition for Writ of Error.

Your petitioners, Ambrosio Apapas, Cornelio Lubo, Francisco Lubo, Pablino Lubo, Pio Lubo and Leonicio Lugo, defendants in the above entitled action, bring this, their petition, for a writ of error to the District Court of the United States in and for the Southern District of California, Southern Division, and in that behalf your petitioners say:

That on the 21st day of March, 1913, there was given, rendered and entered in the above entitled Court, a verdict against your petitioners, wherein and whereby your petitioners were found guilty of murder in the second degree on the first and third counts of the indictment in the above entitled cause. That thereafter, and on the 27th day of March, 1913, your petitioners were sentenced to imprisonment in the United States Penitentiary at McNeal's Island, Washington, for the period of ten years, and your petitioners say that they are advised by counsel and aver that there was and is manifest error

in the record and proceedings had in such cause and *and* in
430 the making, giving, rendition and entry of such judgment and sentence to the great injury and damage of your petitioners, all of which error will more fully be made to appear by an examination of said record and by an examination of the Bill of Exceptions to be hereafter by your petitioners tendered and filed, and in the assignment of errors hereinafter set out and to the end hereafter that the judgment, sentence and proceedings may be reviewed by the United States Supreme Court.

Your petitioners pray that a writ of error may be issued directed therefrom to the said District Court of the United States, Southern District of California, Southern Division, returnable according to law and the practice of the Court, and that there may be directed to be returned pursuant thereto a true copy of the record, bill of exceptions, assignment of errors, and all proceedings had and to be had in said cause, that the same may be removed unto the United States Supreme Court, to the end that the error, if any has happened, may be duly corrected and full*y* and speedy justice done your petitioners.

And your petitioners make an assignment of errors attached hereto upon which they and each of them will rely and will be made to appear by return of the said record in obedience to said writ.

Wherefore your petitioners pray the issuance of a writ as herein prayed and that the assignment of errors annexed hereto may be considered as the assignment of errors upon the writ, and that the judgment entered in this cause may be reversed and held for naught, and that the said cause may be remanded for further proceedings, and that they and each of them be awarded a supersedeas upon said judgment, and all necessary process including bail.

—— ——, *D'f'ts.*

431 AMBROSIO APAPAS,
CORNELIO LUBO,
FRANCISCO LUBO,
PABLINO LUBO,
PIO LUBO,
LEONICIO LUGO,
Defendants.

MIGUEL ESTUDILLO,
Attorney for Defendants.

(Endorsed:) 518 Crim. In the District Court of the United States, Southern District of California, Southern Division. The United States of America, Plaintiff, vs. Ambrosio Apapas, et al., Defendants. Petition for Writ of Error. Filed June 23, 1913. Wm. M. Van Dyke, Clerk, by C. E. Scott, Deputy Clerk. Miguel Estudillo, Attorney for —— ——. Rooms 6, 7 and 8, Covert Block, Riverside, California.

432 In the District Court of the United States Southern *Division* of California, Southern Division.

THE UNITED STATES OF AMERICA, Plaintiff,
vs.
AMBROSIO APAPAS, CHARLEY ARENAS, PATRICK CASERO, AGAPITO LUBO, Cornelio Lubo, Francisco Lubo, Pablino Lubo, Pio Lubo, Cervantes Lubo, and Leonicio Lugo, Defendants.

Assignment of Errors.

Ambrosio Apapas, Cornelio Lubo, Francisco Lubo, Pablino Lubo, Pio Lubo and Leonicio Lugo, defendants in the above entitled cause and plaintiffs in error herein, having petitioned for an order from said Court permitting them to procure a writ of error from this Court directed to the Supreme Court of the United States of America from a judgment and sentence made and entered in said cause against the said Ambrosio Apapas, Cornelio Lubo, Francisco Lubo, Pablino Lubo, Pio Lubo and Leonicio Lugo, plaintiffs in error and petitioners herein now make and file with this said petition the following assignment of Errors herein upon which they will rely for reversal of said judgment and sentence upon the said writ, and which said

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errors and each and every of them are to the great detriment, injury and prejudice of the said defendants and in violation of the rights conferred upon them, and each and every of them says that in the record of proceedings had in the above entitled cause upon the hearing and determination thereof in the District Court of the United States for the Southern District of California, Southern Division, there is manifest error in this, to-wit:

433 I. That the said District Court erred in overruling defendants' objection to the question put to the witness C. E. Arnold:

"Q. Could you say whether this is the one you took from Celso Serano?"

II. The court erred in overruling the defendants' objection to the introduction of the bullets taken from the body of William H. Stanley and from the body of Celso Serrano.

III. The court erred in overruling Defendants' objection to the question put to witness C. E. Arnold.

"Q. Did you hear Mr. Stanley say anything about President McKinley?"

4. The Court erred in allowing the witness C. E. Arnold to testify over the objections of Defendants as follows:

"I have tended Celso Serrano that same night, I found him wounded in the left side of the chest, the bullet went in about two inches external to the mam-ary about the sixth rib, I think, it came out at the back about in the same position, about four inches external from the spine, it was just under the skin."

5. The Court erred in overruling Defendants' objection to the question put to the witness Fanny V. Stevens:

"Q. And what if anything did they answer?"

6. The Court erred in overruling the objection of the Defendants to the question put to the witness Fan-y V. Stevens:

"Q. And did you *n*ave any further conversation, while those two defendants were present and when John was there?"

7. The court erred in overruling the objection of the defendants to the question put to the witness Fanny V. Stevens:

"Q. Did you or Mr. Stanley then say anything concerning the possibility of his living or dying?"

434 8. The Court erred in overruling the objection of the defendants to the questions put to the witness May B. Stanley:

"Q. When Mr. Stanley was on the operating table what, if anything did he say to you?"

"Q. Did he say anything else besides "Good bye Mrs. Stanley? Did he say anything about the future actions concerning your affairs?"

9. The court erred in overruling the objection of the defendants to the question put to the witness Frank P. Wilson:

"Q. When he handed it to you did he say anything?"

10. The Court erred in denying defendants' motion to strike out the answer of the witness Frank P. Wilson: "No sir" to the question.

"Q. Did you or anyone there offer him any immunity or promises for talking?"

11. The Court erred in allowing the introduction as evidence United States Exhibit No. 5, the Pistol, and the shells for identification.

12. The Court erred in refusing to strike out on the motion of the defendants the answer of the witness R. F. Nelson.

"A. The sheriff handed the revolver to Mr. Durlin and Mr. Durlin asked Apapas if that was the gun that he shot Stanley with, and he answered something in a language that I did not understand, and then Mr. Durlin told the gentleman that acted as interpreter there to ask him the question in his own language—this man's name I think was Costa—if that was the gun that he shot Mr. Stanley with and he said, 'Yes sir."

13. The Court erred in overruling the objection of the defendants to the question put to the witness Francis S. Swayne:

"Q. Now Mr. Swayne, when you first came there on the re*s*er-ation in May, 1909, were there any native officers, that is Indian officers, tribal officers on the reservation."

435 14. The Court erred in overruling the objection of the defendants to the question put to the witness Francis A. Swayne:

"Q. Did you ever take any further action with relation to that commission?"

15. The Court erred in overruling the objection of the defendants to the offer in evidence of United States Exhibits 7 and 7A, being Department letter and the letter of transmission of Mr. Stanley.

16. The Court erred in overruling the defendants' objection to the offer in evidence as United States Exhibit 8, a letter signed by Leonicio Lugo.

17. The Court erred in overruling the objection of the defendants to the offer in evidence of United States Exhibit- 9 and 9A, the letter of the department being Exhibit 9 and the letter of transmission being Exhibit 9A.

18. The Court erred in overruling the objection of the defendants to the question put to the witness May B. Stanley:

"Q. What first attracted your attention to this man, did he come to the door and knock?"

19. The Court erred in overruling the objection of the defendants to the question put to the witness May B. Stanley:

"Q. What, if anything, was done about that?"

20. The Court erred in overruling the Defendants' objection to the question put to the witness May B. Stanley:

"Q. Now, Mrs. Stanley, what was Mr. Stanley's habitual temper as to being violent or equable?"

21. The court erred in overruling the defendants' objection to the question put to the witness May B. Stanley:

"Q. Was his manner in dealing with them and in ruling upon their complaints or matters before him concerning the Indians habitually arbitrary, or did he give extended consideration, to what they said, that is, did he listen to all what they had to say and reason with them?"

436 22. The Court erred in overruling the defendants' objection to the question put to the witness May B. Stanley:

"Q. What kind of a doctor was under discussion?"

23. The Court erred in overruling the defendants' objection to the question put to the witness May B. Stanley:

"Q. Was there any discussion then as to whether or not a medicine man had been brought in the reservation for the purpose of attending this cause after Mr. Stanley forbade it?"

24. The Court erred in denying the defendants' motion to strike out all the testimony of the witness May B. Stanley in reference to the conversation had between Mr. Stanley *and herself* and Teofilo Pa on the grounds that it is hearsay and not binding upon the defendants, not one of them being present at the time.

25. The Court erred in overruling the defendants' objection to the question put to the witness Ada A. Light:

"Q. What was he going?"

26. The Court erred in overruling the defendants' objection to the question put to the witness Arnold Archibald Stanley:

"Q. Do you recall any special instance that remains in your mind that you saw Francisco Lubo?"

27. The Court erred in overruling the defendants' objection to the question put to the witness Regina Rios:

"Q. Where you ever present in the office of Mr. Stanley that is the Superintendent's office on the Soboba Reservation, when Mr. Stanley was discussing with the Indians their affairs and the disposition of their affairs on the reservation?"

28. The Court erred in overruling the defendants' objection to the question put to the witness Regina Rios:

"Q. During all the time you knew him, Miss Rios, what was the nature of his temper as displayed toward the Indians in his treating with them as to whether it was violent or quiet?"

437 29. The Court erred in overruling the defendants' objection to the question put to the witness Regina Rios:

"Q. In discussing with the Indians the matters concerning the affairs on the reservation did he listen to them at length and with patience and discuss their matters with them, or did he abruptly or shortly tell them what they must do?"

30. The Court erred in overruling the defendants' objection to the question put to the witness Rose Serrano:

"Q. Now Mrs. Serrano, when Mr. Stanley was talking to the Indians and directing them what to do was his temper ususally quiet or angry?"

31. The Court erred in overruling the defendants' objection to the question put to the witness Anna Maria Casero:

"Q. What was Stanley and the Indians doing when you saw him talking to them on the Soboba reservation?"

32. The Court erred in overruling the Defendants' objection to the question put to the witness Anna Maria Casero:

"Q. At those times was Mr. Stanley's temper and manner towards the Indians violent and severe, or kind and quiet?"

33. The Court erred in overruling the defendants' objection to the question put to the witness Louis Magel:

"Q. Where you ever present at a meeting of any of the people of

Soboba after you moved there in which the people of Soboba decided that you should not live upon the Soboba reservation?"

34. The Court erred in denying the defendants' motion to strike out the answer of the witness Louis Magel:

"A. I don't quite remember, it was in *1985* to the question——

"Q. When did you marry Isabella Alice?"

35. The Court erred in overruling the defendants' objection to the question put to the witness Antonio S. Contreras:

"Q. What was said and what was the conversation?"

438 36. The Court erred in overruling the defendants' objection to the question put to the witness J. F. Durlin:

"Q. What did he say, if anything?"

37. The Court erred in overruling the defendants' objection to the question put to the witness John Largo:

"Q. What is Juanito Casero, what is his business or profession?"

38. The Court erred in overruling the defendants' objection to the question put to the witness John Largo:

"Q. What were they doing over there, John? What were the people doing, anything?"

39. The Court erred in overruling the defendants' objection to the question put to the witness John Largo:

"Q. Were all of these defendants there?"

40. The Court erred in overruling the defendants' objection to the question put to the witness John Largo:

"Q. And the others, not Leonicio, but the others, how do they make their living, do you know?"

41. The court erred in overruling the defendants' objection to the question put to the witness John Largo:

"Q. How has Leonicio Lugo made his living during the past few years?"

42. The Court erred in overruling the defendants' objectio- to the question put to the witness Celso Serrano:

"Q. When were you appointed forrest guard?"

43. The Court erred in overruling the defendants' objection to the question put to the witness Selso Serrano:

"Q. Now Celso did that bullet go through your body, or did it—between the ribs or below or above the ribs, or did it strike a rib?"

44. The Court erred in overruling the defendants' objection to the question put to the witness Celso Serrano:

439 "Q. And did anything happen when you got up there?"

45. The Court erred in overruling the defendants' objection to the questions put to the witness Celso Serrano:

"Q. Were you familiar with the Sosoba reservation in the summer of 1911 along about June, July, August and September. I mean were you on the Soboba reservation along about that time, Celso, in the summer before Mr. Stanley was shot, and did you see Teofilo Pa's land there?"

46. The Court erred in overruling the defendants' objection to the question put to the witness Celso Serrano:

"Q. Then what happened at that meeting, what did they talk about?"

47. The Court erred in overruling the defendants' objection to the question put to the witness Francisco (Chico) Lugo:

"Q. What position did he hold on the reservation at Cahuilla if any?"

48. The Court erred in overruling the objection of the defendants to the question put to the witness Francisco Lugo:

"Q. And have you seen him there all the time, every day?"

49. The court erred in overruling the objection of the defendants to the question to the witness Francisco Lugo:

"Q. When he was on the reservation what was his occupation?"

50. The court erred in overruling the defendants' objection to the question put to the witness Francisco Lugo:

"Q. Since he was appointed captain, about four years ago, has he work*ing* at anything else on the reservation at Cahuilla?"

51. The court erred in overruling the defendants' objection to the question put to the witness Adolfo Lugo:

"Q. And did you hear John Largo have a talk with Cornelio Lubo?"

52. The court erred in overruling the defendants' objection to the question put to the witness Adolfo Lugo:

"Q. I will ask you to look at this photograph that I now
440 show you and ask you if this is a good photograph of the way things look if you are looking out of the door from in the school room?"

53. The court erred in overruling the defendants' objection to the question put to the witness Carl Stevens:

"Q. And what was his habitual attitude as to his temper, as to whether it was irascible and violent or quiet and courteous?"

54. The Court erred in overruling the objection of the defendants' to the introduction of a photograph identified by the witness Carl Stevens and marked United States Exhibit No. 13A.

55. The Court erred in overruling the objection of the defendants to the introduction of a photograph identified by the witness Carl Stevens and marked United States Exhibit No. 13B.

56. The court erred in overruling the objection of the defendants to the introduction of a photograph identified by the witness Carl Stevens and marked United States Exhibit No. 13C, and in permitting any examination of said witness Stevens with reference to said photograph.

57. The court erred in denying the motion made by the defendants to strike out the answer of the witness Carl A. Pederson:

"A. Mr. Stanley said I don't recognize your appointment as captain of these people because you failed to work in the interest of all the people, and on my first trip up here I offered to let you people elect your captain, or your judge and police and you refused to do so, and so I told you that the men that are now serving would continue until you were notified otherwise, then some one got up and—I don't remember whether they got up or not—but some one among the crowd of the Indians made the remark,—we heard you came up to brand the bulls today—through the interpreter—and Mr. Stanley said: "Yes, I had instructions to brand the bulls"—well, they then

told him that if he branded the bulls he would have to take them off the reservation."

441 58. The court erred in overruling the objection of the defendants to the question put to the witness Carl A. Pederson:

"Q. I show you a coat Mr. Pederson and ask you if you know whose coat this is?"

59. The court erred in overruling the objection of the defendants to the question put to the witness Carl A. Pederson:

"Q. The contents being a piece of lead I ask you to look at it and state where you first got that?"

60. The court erred in overruling the objection of the defendants to the question put to the witness Carl A. Pederron:

"Q. Did you examine the hole there in the blackboard to see what relation the place where the bullet struck inside bore to the hole in the blackboard?"

61. The court erred in overruling the objection of the defendants to the question put to the witness Carl A. Pederron:

"Q. Did you ever stand up with that coat alongside that wall? as you stood there how near to the same heights above was the hole in the wall and the hole in the side of your coat?"

62. The court erred in denying after the government closed its case defendants' motion to strike out all the evidence in reference to Patrick Casero and in reference to all the defendants other than Apapas, on the ground that there was no evidence connecting the said Patrick Casero, or defendants other than Apapas with the death of Mr. Stanley:

63. The court erred in denying the motion made by the defendants that the court direct the jury to render a verdict for the defendants for the reason that the District Court of the United States in and for the Southern District of California, Southern Division had no jurisdiction of the persons of the defendants nor of the subject matter alleged in the indictments as the defendants

442 are citizens of the United States, the fathers of the defendants were born prior to 1848, while California was a part of the Republic of Mexico and under the laws of Mexico that their fathers and ancestors were citizens of the Republic of Mexico and by virtue of the treaty between the United States of America and the Republic of Mexico, known as the Treaty of Guadalupe Hidalgo, the ancestors of the defendants and the defendants became citizens of the United States of America; that the defendants did not, neither did their ancestors ever renounce such citizenship.

64. The court erred in overruling the objection of the defendants to the question asked in cross examination, of the witnesw Patrick Casero.

"Q. When you went up there to Cahuilla you did not know that Senator Estudillo and Ambrosio and Lugo had gone to Washington?"

65. The court erred in overruling the objection of the defendants to the question put in cross examination to the witness Patrick Casero:

"Q. You were there when Mr. Swayne discharged him as Captain, weren't you?"

66. The court erred in overruling the objection of the defendants to the question put in cross examination to the witness Patrick Casero:

"Q. At that time did Leonicio tell you that he had already received a letter from the Indian service, saying that he would not be recognized as captain on the reservation?"

67. The court — in overruling the objection of the defendants to the question put to the witness Patrick Casero on cross examination:

"Q. There were chairs all around the back of those desks that Mr. Stevens had put around for those Indians to sit in, were there not?"

443 68. The court erred in overruling the objection of the defendants to the question on cross examination put to the witness Pablino Lugo:

"Q. Didn't Mr. Stanley in the presence of these three men at your house up there at the Coahuilla reservation that night tell you that he could not pay you money that you claimed for your son's transportation from the Carlisle school because he would have to refer it to the government and didn't you tell him that he was a liar"?

69. The court erred in overruling the objection of the defendants to the questions put on cross examination to the witness Cornelio Lugo:

"Q. As Ambrosio went out of the yard did you see Mr. Stanley?"

70. The court erred in overruling the objection of the defendants to the questions put on cross examination to the witness Cornelio Lubo:

"Q. Early in the night John Largo came *andet* and told you Mr. Stanley wanted to see you?"

71. The court erred in overruling the objection of the defendants to the question put in cross examination to the defendant Cornelio Lugo:

"Q. Well, why did not you ask Mr. Stanley or somebody else what he wanted you for?"

72. The court erred in overruling the objection of the defendants to the questions put to the defendant Cornelio Lugo on cross examination:

"Q. Is it not a fact that what you went over there for with Leonicio Lugo was to tell Mr. Stanley that he had nothing to do with you and no authority over you or any other Indian except with the consent of your captain, Leonicio Lugo?"

444 73. The court erred in overruling the objection of the defendants to the questions on cross examination put to the defendant Agapito Lugo:

"Q. Have you got a farm of your own?"

74. The court erred in overruling the objection of the defendants to the question put to the defendant Francisco Lubo on cross examination:

"Q. Has he ever been put in jail for committing a felony?"

75. The court erred in overruling the objection of the defendants

to the question put to the defendant Cervantes Lubo on cross examination:

"Q. He is the man sent there by the government to take charge of the Cahuilla reservation."

76. The court erred in overruling the objection of the defendants to the question put to the defendant Cervantes Lubo, on cross examination:

"Q. Did you go to a meeting before that when the Indians went to the school house and met Mr. Stanley?"

77. The court erred in overruling the objection of the defendants to the questions put to the witness Callisto Tortes on cross examination:

"Q. Well, he was superintendent of the Santa Rosa Indians, was he not?"

78. The court erred in overruling the defendant's objection to the question put to the witness Callisto Tor-es on cross examination:

"Q. Well, why were you scared if you did not think anything was going to happen, if you did not know that they were going to kill Mr. Stanley or drive him off the reservation, why did not you leave the school house, why were you scared to go out?"

79. The court erred in overruling the objection of the defendants to the question put to the defendant Callisto Tortes:
445 on cross examination:

"Q. Didn't you know when you went into the school room from conversations you had with Leonicio Lugo that it was planned that you being a stranger and Juan Costa the Judge, and Juanito Casero should stay inside the school room and not see what had happened and that Leonicio Lugo should get outside the gate so he would not see anything that happened?"

80. The court erred in overruling the defendants' objection to questions of the same general nature put to the witness Juan Costa:

"Q. And the government has not any right on it, is that the idea?" And you believed that day that the government had no right on the reservation?"

81. The court erred in overruling the objection of the defendants to the question put to the witness Juanito Casero on cross examination:

"Q. You are a medicine man, are you?"

82. The court erred in overruling the objection of the defendants to the question put to the witness Ignacio Guache on cross examination:

"Q. You knew that they had finished what they set out to do?"

83. The court erred in overruling the objection of the defendants to the questions put to the witness Augustino Hamilton on cross examination:

"Q. As you were coming out of the school house did you see Ambrosio Apapas, did you see him in the front yard?"

84. The court erred in overruling the objection of the defendants to the question put to the defendant Leonicio Lugo on cross examination:

"Q. Isn't that the shirt Mr. Stanley had on that morning, a blue shirt? That is not the same shirt, is it?"

446 85. The court erred in overruling the objection of the defendants to the question put to the defendant Leonicio Lugo in cross examination:

"Q. Instead of being in shirt sleeves that morning when he came on the porch didn't Mr. Stanley have on this coat which I now show you?"

86. The court erred in overruling the objection of the defendants to the question put in cross examination to the defendant Leonicio Lugo:

"Q. During the last five years at what have you labored?"

87. The court erred in overruling the objections of the defendants to questions of the same general nature seeking to elicit answers from the defendant Leonicio Lugo to the effect that Mr. Stanley had no right on the reservation:

"Q. What do you think about it?"

88. The court erred in overruling the objection of the defendants to the question put to the defendant Leonicio Lugo on cross examination:

"Q. The Cahuilla reservation was not the only one that you were captain of?"

89. The court erred in overruling the objection of the defendants to the question on cross examination put to the defendant Leonicio Lugo:

"Q. Isn't the reason that you did not talk to Mr. Stanley in the English language, but talked in the Indian language that you wanted your people there to understand at that meeting that you were talking as their friend and Mr. Stanley's enemy and dictating to Mr. Stanley?"

90. The court erred in overruling the objections of the defendants to the questions put in cross examination to the defendant Leonicio Lugo:

447 "Q. If you were a friend of his why did you write this letter of October 5th, 1911?"

91. The court erred in overruling the objection of the defendants to the question put to the defendant Leonicio Lugo on cross-examination.

"Q. You started down to go sixty three miles to Riverside with this man without knowing the man he shot at, was hurt or not, wa*n*s't that a fact?"

92. The court erred in overruling the objection of the defendants to the question put on cross examination to the defendant Leonicio Lugo?"

"Q. Why didn't you go over and tell Mr. Stanley as an Indian agent that Francisco Lubo had a complaint against his forest guard?"

93. The Court erred in overruling the objection of the defendants to the question put in cross examination to the witness Ambrosio Apapas:

"Q. Why didn't you go?"

94. The court erred in overruling the objection of the defendants to the question put to the witness William Bradford:

"Q. Did you ever see Pablino Lubo and Antonio Contreras talking there on the ranch together?"

95. The court erred in overruling the objection of the defendants to the question put to the witness John Largo:

"Q. On the evening of May first, the evening Mr. Stanley came to Cuahuilla did you go with him over to Pablino Lubo's house?"

96. The court erred in overruling the objection of the defendants to the question put to the witness Charles Vandeventer:

"Q. Did he tell you at that time that he knew before he went away that Mr. Stanley would be killed?"

97. The court erred in refusing to give the following instruction requested by the defendants:

448 You are instructed, gentlemen of the jury, that the defendant Cornelio Lubo, was not required by law to report to William H. Stanley on the 2nd day of May, 1912, unless you find from the evidence that he had been summoned by warrant or due process of law to do so and unless you find that he had violated some law, and you must find it from the evidence he was not required to stay at the school building on the said second day of May, and his leaving constituted no breach of law that justified his detention. And if you find from the evidence that said Cornelio Lubo violated no law on said date, and had not been summoned by warrant as required by law to report to the said William H. Stanley, his leaving the school house was justified and the attempt of the policeman John Largo to bring him back into the school house constituted an assault on the said Cornelio Lubo and he was justified in resisting the attack of said John Largo, and if you find that in the attempt of John Largo, to bring said Cornelio back to the school house the said John Largo, drew his pistol and shot at said Cornelio Lubo, the said shooting constituted an assault on said Cornelio Lubo, and the persons present were justified in disarming said John Largo and placing or attempting to place him under arrest.

98. The court erred in overruling and denying defendants' motion for a new trial, on the following grounds:

A.

That the jury received evidence out of court other than that resulting from a view of the premises.

B.

That the verdict was decided by lot and by means other than a fair expression of opinion on the part of all the jurors.

C.

On account of errors of law arising during the course of the
449 trial and excepted to by the defendants.

D.

That the said verdict is contrary to law.

E.

That the said verdict is cont*d*rary to the evidence and is not sustained thereby.

F.

An account of misconduct of the jurors during the trial.

G.

On account of misconduct of the attorney representing the plaintiff in the case.

99. The court erred in making, giving and rendering judgment against the defendants for the reason that it did not have jurisdiction of the persons of the defendants.

100. The court erred in pronouncing sentence against the defendants, as it was never proven that they were Indians and wards of the government.

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MIGUEL ESTUDILLO,
Attorney for Ambrosio Apapas, Cornelio Lubo, Francisco Lubo, Pablino Lubo, Pio Lubo, and Leonicio Lugo, Plaintiffs in Error.

UNITED STATES OF AMERICA,
Southern District of California, Southern Division:

I hereby certify that the foregoing assignment of Errors is made on behalf of the petition for a writ of error herein and are in my opinion well taken and the same now constitute the assignment of errors upon the writ prayed for.

MIGUEL ESTUDILLO,
Attorney for Plaintiffs in Error.

(Endorsed:) 518 Crim. In the District Court of the United States in and for the Southern District of California, Southern Division. The United States of America, Plaintiff, vs. Ambrosio Apapas et al., Defendants. Assignment of Errors. Miguel Estudillo, Attorney for —, Rooms 6, 7 and 8, Covert Block, Riverside, California. Filed June 23, 1913. Wm. M. Van Dyke, by C. E. Scott, Deputy Clerk.

451 In the District Court of the United States in and for the Southern District of California, Southern Division.

UNITED STATES OF AMERICA, Plaintiff,
vs.
AMBROSIO APAPAS, CHARLEY ARENAS, PATRICK CASERO, AGAPITO Lubo, Cornelio Lubo, Francisco Lubo, Pablino Lubo, Pio Lubo, Cervantes Lubo, and Leonicio Lugo, Defendants.

Order Allowing Writ of Error.

On motion of Miguel Estudillo, Attorney for the Defendants Ambrosio Apapas, Cornelio Lubo, Francisco Lubo, Pablino Lubo, Pio Lubo, and Leonicio Lugo, and upon filing the petition for a writ of error and assignment of errors, it is hereby ordered that a writ of error be and hereby is allowed to have reviewed in the Supreme Court of the United States the verdict and judgment heretofore entered herein.

Done in open Court this 23rd day of June, 1913.

OLIN WELLBORN, *Judge.*

(Endorsed:) 518 Crim. In the District Court of the United States in and for the Southern District of California, Southern Division. The United States of America, Plaintiff, vs. Ambrosio Apapas et al., Defendants. Order allowing writ of error. Filed June 23, 1913. Wm. M. Van Dyke, Clerk. By C. E. Scott, Deputy Clerk. Miguel Estudillo, Attorney for —, Rooms 6, 7 and 8, Covert Block, Riverside, California.

452 In the District Court of the United States of America in and for the Southern District of California, Southern Division.

No. 518, Crim.

THE UNITED STATES OF AMERICA, Plaintiffs,
vs.
AMBROSIO APAPAS, CHARLEY ARENAS, PATRICK CASERO, AGAPITO Lubo, Cornelio Lubo, Francisco Lubo, Pablino Lubo, Pio Lubo, Cervantes Lubo, and Leonicio Lugo, Defendants.

I, Wm. M. Van Dyke, Clerk of the District Court of the United States of America, in and for the Southern District of California, do hereby certify the foregoing four hundred and fifty-one pages, numbered from 1 to 451 inclusive, and comprised in one volume, to be a full, true and correct copy of the Indictment, Bench Warrant, Copy Pleas, Copy Minutes of Trial, Verdict, Motion for New Trial, Copy Orders Denying Motions for New Trial and in Arrest of Judgment and of Sentences, Bill of Exceptions, Petition for Writ of Error, Assignment of Errors, and Order Allowing Writ of Error,

in the above and therein entitled cause, and that the same together constitute the record in said cause as specified in the Præcipe filed in my office, on behalf of the plaintiffs in error by their attorneys of record, and constitute the return to the annexed writ of error.

I do further certify that the cost of the foregoing record is $256 85/100, the amount whereof has been paid me on behalf of the plaintiffs in error by Miguel Estudillo, Esq., their attorney.

453 In testimony whereof, I have hereunto set my hand and affixed the seal of the District Court of the United Sttates of America, in and for the Southern District of California, Southern Division, this 23rd day of September, in the year of our Lord one thousand nine hundred and thirteen, and of our Independence the one hundred and thirty-eighth.

[Seal of the U. S. District Court, Southern Dist. of California.]

WM. M. VAN DYKE,
Clerk of the District Court of the United States in and for the Southern District of California.

Endorsed on cover: File No. 23,897. S. California D. C. U. S. Term No. 746. Ambrosio Apapas, Cornelio Lubo, Francisco Lubo et al., plaintiffs in error, vs. The United States. Filed October 13th, 1913. File No. 23,897.

18

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No. 746

In the Supreme Court of the United States

OCTOBER TERM, 1913

AMBROSIO APAPAS, CORNELIO LUBO, FRANCISCO LUBO, ET AL., PLAINTIFFS IN ERROR

v.

THE UNITED STATES

IN ERROR TO THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF CALIFORNIA

BRIEF OF PLAINTIFFS IN ERROR

THEODORE MARTIN AND MIGUEL ESTUDILLO
Attorneys for Plaintiff in Error

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In the Supreme Court of the United States

AMBROSIO APAPAS, CORNELIO LUBO, FRANCISCO LUBO, et al., (defendants),
Plaintiffs in Error,
vs.
UNITED STATES, (plaintiff),
Defendant in Error.

No. 746.

IN ERROR TO THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF CALIFORNIA

BRIEF OF PLAINTIFFS IN ERROR

STATEMENT OF THE CASE

Plaintiffs in error, together with four others, were informed against by the Grand Jurors in the District Court of the United States in and for the Southern District of California, Southern Division, on the 6th day of July, 1912, for mak-

ing an assault with a deadly weapon upon William H. Stanley, wilfully and with malice and premeditation, to effect the death of William H. Stanley, and that they did shoot the said William H. Stanley in the abdomen, from which wound the said William H. Stanley died on the 3rd day of May, 1912.

The indictment contained three counts. In the second count all the plaintiffs in error other than Ambrosio Apapas were charged with inducing and procuring the said Ambrosio Apapas to shoot William H. Stanley, and in the third count the plaintiffs in error (defendants) other than Apapas were charged with aiding and abetting the said Apapas to shoot William H. Stanley.

Plaintiffs in error were, after a trial lasting nearly a month, (from the 4th of March to the 26th day of March, 1913), convicted under the counts of the said indictment, of murder in the second degree, and were on March 27th, 1913, sentenced to ten years in the penitentiary at McNeil's Island, in the State of Washington. From that verdict and sentence the defendants sued out this writ of error. The plaintiffs in error are natives of California and lived at Cahuilla, Riverside County, in that state.

As the plaintiffs in error view this case, the

primal matter submitted for determination is whether the District Court of the United States in and for the Southern District of California, had jurisdiction to try them. They contend that as citizens of the State of California, the said district court had no jurisdiction to try them for this offense. This contention is based upon the fact that the plaintiffs in error are descendants of Mexican citizens, who were living in California at the time it was admitted as a State. This contention was decided adversely to plaintiffs in error by the district court.

The other points involved briefly stated are:

(a.) That J. F. Durlin, Deputy United States Marshal in and for the Southern District of California, was allowed to testify as to what the defendant, Ambrosio Apapas, said to him in reference to a revolver, (R. 98-99). Plaintiffs in error claim that this was in violation of the Fifth amendment of the Federal constitution.

(b.) The refusal of the court to grant a motion in arrest of judgment made by the defendants, (R. 33).

(c.) The refusal of the court to grant defendant's motion for a new trial, (R. 32).

(d.) The refusal of the court to strike out testimony in reference to the defendants other than Apapas on the grounds that there was no

evidence of a conspiracy connecting the defendants other than Apapas with the death of Mr. Stanley.

(e.) The refusal of the court to give an instruction requested by defendants, (R. 261).

(f.) Errors of law occurring during the trial in the introduction of evidence.

II.

SPECIFICATIONS OF ERRORS

1. After the Government closed its case, the defendants moved the court to direct a verdict for them submitting the same and reasons therefor in writing in the words and figures following:

"That the District Court of the United States in and for the District of California, Southern Division, has no jurisdiction of the persons of the defendants nor of the subject matter alleged in the indictment against these defendants for the reason that the defendants are citizens of the United States; That the fathers of the defendants were born prior to 1848 in the Territory known as 'Alta California, which said territory became the State of California' under the jurisdiction of the United States of America; That Alta California was a part of the Republic of Mexico; That under the laws of Mexico the defendants and their fathers were citizens of

the Republic of Mexico; That by virtue of the treaty of peace between the United States of America and the Republic of Mexico, commonly known as the treaty of Guadalupe Hidalgo, the ancestors of the defendants became citizens of the United States for the reason that they failed or refused to elect to continue or to become citizens of Mexico; That none of the defendants herein nor the ancestors of each or any of them ever renounced such citizenship; That thereafter by virtue of the act of Congress admitting the State of California into the Union, they became citizens of the State of California and have ever remained such; That the defendants here named were born within the limits of the United States and have severed and given up all tribal relation, living separate and apart from each other (R. 145-146.)

The plaintiffs in error introduced testimony in support of this motion.

The court decided that from the necessity of the case it was a political question to be determined by the political department of the Government, (R. 154).

2. The admission of the testimony of J. F. Durlin, a witness on behalf of the Government.

On the direct examination of J. F. Durlin, a Deputy United States Marshal in and for the Southern District of California, who was a

witness for the prosecution, after testifying that he was in the sheriff's office at Riverside, California, on the 6th day of May, 1912, in the presence of Sheriff Wilson and Deputy Sheriff Nelson and Gabe Costa, and two of the defendants, Ambrosio Apapas and Francisco Lubo and no others, was asked the following questions and made the following answers:

Q. Now, when you went there to the sheriff's office, and all of these persons were present, did you have any conversation?

A. Yes, sir.

Q. That gun there, was it, in the room?

A. Yes, sir; It was brought in at my request—.

Q. Was this gun shown to the defendant, Apapas?

A. It was.

Q. Was there any question asked him?

A. Yes, sir.

Q. What was the first thing that was said in the conversation with Apapas?

A. I asked him if he ever saw that gun?

Q. What did he say, if anything?

A. He answered me back——.

Mr. Johnstone: One minute. We object that there is no proper foundation laid for a confession; there is no evidence to show that

there was any inducement or immunity offered, or what the circumstances were under which the statements were made.

Mr. Robinson: We do not intend to prove that there were any inducements offered, your honor, but I understood counsel the other day objected to my method of proving that, so in order to meet his objection and start with a clear sheet, I adopted what I did not think was the correct method, of simply asking what happened, and if anything objectionable comes up, counsel can object to it.

The Court: I think perhaps the foundation was laid the other day for the transaction. I will overrule the objection.

Exception taken.

Q. What did he say, if anything?

A. He said, yes, that he had seen the gun before.

Question by Mr. Robinson: In what language did he say that?

A. He answered first, and I asked the direct question, I said: 'Did you ever see this gun before?' And he understood what I was saying, and he said, "Si", and that is Spanish for "Yes", and then through the interpreter——.

Mr. Estudillo: Just a minute. I move to strike out what he gives as his opinion.

Mr. Robinson: That he understood what he said—those words "He understood what I said" may be stricken out, of course.

A. He answered "Si", which is "Yes" in Spanish. Then through the interpreter the question was put to him and he answered——.

Mr. Johnstone: Just a minute. We object to the answer of the interpreter.

Mr. Robinson: I have stopped the witness It is not necessary to take up time.

Q. When the gun was shown to him and these questions were asked did the defendant Apapas look at the gun?

A. Yes, sir.

Q. And did he make any motion or gesture at all toward the gun?

A. Yes, sir.

Q. What was it?

A. (Indicating) "Si".

Q. Now, I show you six shells, four empty and two loaded cartridges, being United States exhibit 6 for identification, and ask you to look at those and see if there are any marks on them by which you can identify them.

A. Yes, sir.

Q. You recognize marks on each of them, do you?

A. Yes, sir.

Q. Who made those marks?

A. I did.

Q. Where?

A. In the grand jury room.

Q. Federal grand jury room?

A. Yes sir.

Q. Up to the time that you made those marks on those shells in the grand jury room, in whose possession had they been?

A. They had been in my possession?

Q. From whom did you get those shells and gun?

A. Sheriff Wilson of Riverside.

Q. On this occasion of which you have testified?

A. Yes sir.

Q. Are they in the same condition, with the exception of the marks you put on them, as when you got them from Sheriff Wilson?

A. Just the same.

Q. Did you mark the two cartridges?

A. Yes sir.

Q. Did you make this cross-cut on the head on each one of those bullets?

A. Yes sir.

Q. When you received them were those bullets in the gun?

A. They were in the gun.

Mr. Robinson: We offer them as Untied States Exhibit 6.

Mr. Johnstone: They were received in evidence solely as being cartridges taken from the gun without any reference to the position they were in the gun.

Q. By Mr. Robinson: Mr. Durlin, do you remember in what order those cartridges, loaded and unloaded, were in the gun?

A. To the best of my recollection now there were four empties and two loaded. That is the way they ran.

Q. Right in sequence?

A. Right in sequence.

Q. You don't know which loaded one was to the left of which was to the right, but they were in a circle?

A. I do not.

Q. They were all in a circle, were they?

A. All in a circle.

(R. 98, O. 166).

3. Refusal of the court to grant motion for arrest of judgment, (R. 33-34).

4. Refusal of the court to grant defendant's motion for a new trial, (R. 32-34).

5. The refusal of the court to strike out all evidence in reference to Patrick Casero, and the

other defendants except Apapas on the ground that there was no evidence of a conspiracy and no evidence connecting said defendants with the death of Mr. Stanley. (R. 145).

6. The refusal of the court to give the following instruction requested by the defendants.

"You are instructed, gentlemen of the jury, that the defendant Cornelio Lubo was not required by law to report to William H. Stanley on the 2nd day of May, 1912, unless you find from the evidence that he had been summoned by warrant or due process of law to do so and unless you find that he had violated some law, and you must find it from the evidence he was not required to stay at the school building on the said second day of May, and his leaving constituted no breach of law that justified his detention. And if you find from the evidence that said Cornelio Lubo violated no law on said date, and had not been summoned by warrant as required by law to report to the said William H. Stanley, his leaving the school house was justified and the attempt of the policeman John Largo to bring him back into the school house constituted an assault on the said Cornelio Lubo and he was justified in resisting the attack of said John Largo, and if you find that in the attempt of John Largo, to bring said Cornelio back to the school house the said John Largo,

drew his pistol and shot at said Cornelio Lubo, the said shooting constituted an assault on said Cornelio Lubo, and the persons present were justified in disarming said John Largo and placing or attempting to place him under arrest."

R. 261.

7. The court erred in allowing the introduction of evidence of the letters dated October 6th, 1911, from C. F. Hauke, Second Assistant Commissioner of Indian Affairs, and the one from Mr. Stanley dated October 12, 1912, to Leonicio Lugo, one of the defendants, being plaintiff's Exhibits 7 and 7A. (R. 61-62-63).

Oct. 6, 1911.

"Mr. Leonicio Lugo, (Through Superintendent Soboba Indian School), San Jacinto, California.

My Friend: At various times complaints have reached the Office relative to dissatisfaction among some of the Indians concerning the administration of affairs, on your reservation.

As a new superintendent has now taken charge, it is hoped that your relations with him may be agreeable, and that there may not be a repetition of the complaints made against the former superintendent. It is not intended that you should understand that the former superintendent was transferred because of the com-

plaints, or through any fault on his part; but it is only hoped that you may under his successor come to realize that it is better for you to work with him rather than against him

The Office has recently received a letter from Mr. Stanley, in which he states that he has visited the Indians on the Santa Rosa and Cahuilla reservations, and that he has found them "courteous, obliging and respectful," and that he believes that they will be ready to work in unison with him as soon as they come to an understanding of the duties of his position as an agent of the Government. You must understand that his main duty is to do whatever is to your best interests and advantage, according to his judgment and also according to certain regulations which have been laid down for him by the Office at Washington. These rules he is obliged to follow; he has no choice. You, and other leaders among the Indians, can help him in this work, and by such means benefit your race. But, on the other hand, if you oppose his efforts, you may cause dissatisfaction among others of your race and by such means cause them trouble.

The situation is put before you in this way in order to give you an opportunity to think over these matters, and decide whether it will not be to your advantage to work agreeably with Mr.

Stanley in carrying out the instructions given him by the Office, which he will be expected to carry out whether you oppose him or not.

Respectfully,

(Signed) C. F. HAUKE,"

2nd Asst. Commissioner."

"Soboba Indian School, California.

San Jacinto, California, October 12, 1912.

Mr. Leonicio Lugo, Cahuilla, California.

Dear Friend Lugo: Enclosed herewith I am handing you a letter from the Indian Office relative to matters at Cahuilla now and during the past few years. The Office has laid out my plans for work at Cahuilla and I request the co-operation of every Indian at Cahuilla to bring them to a successful and satisfactory termination. I would advise you to get together and show a willingness to do the right thing and I am sure we will be able to "do things" at Cahuilla.

Let's get together and start the ball a rolling and show the Office that Cahuilla is just as willing and ready to be agreeable and progressive as any other reservation and that the Cahuillas are not a grouchy or complaining people. If you people are not willing to do this after this solicitation on the part of the Indian Office and this office, my position is clear and I

must do then my duty regardless of what you people wish in the matter, and do it with promptness and dispatch. Again I say, let's get together and "do things." Let me hear from you about this matter or come down and let's talk the prospects over.

Very respectfully,

SUPT."

Also Exhibit 8, a certain document addressed to Hon. R. G. Valentine, Commissioner of Indian Affairs at Washington and signed by two Indians not connected with this case whatever. (R. 64-65).

"October 25, 1911.

Hon R. G. Valentine, Commissioner of Indian Affairs, Washington, D. C.

Dear Sir: We have received a letter from Assistant Commissioner Hauke in which he refers to Superintendent Stanley of the Soboba Indian Reservation, the Cahuillas, and the Santa Rosa Indians, and tells us that we must get along with Superintendent Stanley.

We are willing to get along with any man who will treat us fairly, and who will have the patience to deal with us as we think we should be dealt with. We are not asking very much, only to be allowed to elect our own Captains and our own Judges, and to be allowed to remain on the

land that our fore-fathers lived on for generations past,—long before the white man ever coveted our country.

We are asking that you send us men who will not force upon us people who are not members of our tribe, but who happen to be in the good graces of the Superintendent. We are not rebellious or quarrelsome or a complaining people. We are willing to take any man that you send us if he will treat us half way fairly and justly, and will not tyrran-ize over us, simply because he has the power to do so.

The people of Soboba, Cahuilla and Santa Rosa Reservations protest against the appointment of Mr. Stanley as their Captain, for the reason that he is arbitrary, tyrannical in his rulings, and violent in temper, and for the further reason, that upon the slightest provocation he imprisons an Indian, without trial and without cause.

I have attached affidavits here, substantiating these charges, and we respectfully ask you to send us some other Superintendent. We are a peaceable people, and we want to obey all the rulings of your department, but we are crying out for redress and deliverance from the man that you have placed over us.

Very respectfully,

(Signed) LEONICIO LUGO."

STATE OF CALIFORNIA, } ss.
COUNTY OF RIVERSIDE. }

Teofilo Pa, being duly sworn, deposes and says: I am an Indian, a native of Soboba, in the County of Riverside, State of California, and I am a member of the Soboba tribe of Indians. I was born on the Soboba Reservation; I have been Captain of the Soboba tribe at three different times, I have also been Judge. I have known William Stanley for several years. The said William Stanley is a man of irascible temper, and very impatient in his dealings with the members of my tribe. He is arbitrary in his rule, and at times tyrannical in his treatment.

During the month of March, 1911, my brother Juan Torte, desired to get an Indian doctor to attend our father. Stanley objected to it, and stated that we could not have a doctor unless the doctor was called by himself. Together with my brother, I called at Stanley's house, and asked him whether it was true that he, Stanley, had sent our Indian Doctor away. Stanley replied I have orders from the Government to furnish you doctors, no one has a right to cure only those authorized by me. That is all that happened between Stanley and myself. I did not say anything to Stanley personally, and only talked to my brother in the presence of Stanley.

Two days after this interview with Superintendent Stanley, his policeman notified me to ap-

pear before Stanley. I did so, and Stanley sentenced me to five days at hard labor, although I was sick with rheumatism at the time, on the charge of insubordination; and my brother Juan Torte, was sentenced to ten days in jail. He offered to pay the fine, but was not allowed to do so, as Stanley refused to accept the money for the fine, insisting that my brother should serve his time in jail; the offense my brother committed was merely to ask Stanley in my presence, whether he, my brother, could not have his own doctor; and my offense was the fact that I was present when those questions were asked Superintendent Stanley by my brother. Although we have lived upon the land for generations past, Stanley tells us that we do not own the land, and therefore, we are afraid to plant it to trees or anything else, for fear that we might lose it. Further than that, Stanley refuses to allow us to cut timber upon our own land. It is necessary for us, in order to live, to have the right of cutting the timber on our own land, and selling it, as we can exchange the wood for seed and for something to eat.

Of the 500 eucalypti planted, I cannot cut a single tree, for fear that Stanley will throw me in jail, although I am sorely in need of the profits that I would derive from sale of the wood. Stanley tells us that the wood belongs to the Gov-

ernment, and therefore that we cannot cut it, and what I say in reference to myself is true in reference to every other Indian living on the reservation. All the other Indians, as well as myself, would be glad to plant trees for wood and shade, and fruit trees for the purpose of making our living, but we are afraid of Stanley.

Further than that, affiant says, that Superintendent Stanley is partial and shows decided favoritism to a few Indians who do his bidding, and those few Indians are just about seven in number. The rest of the people of the reservation are not in the good graces of Superintendent Stanley.

Affiant further says, that Superintendent Stanley has been in the habit of giving lots of land in the reservation to outsiders who have moved into the reservation, an instance of this is the land of an old man by the name of Sceferino, whose house and land was taken away from him by Stanley and given to Joe Estrada. Another instance is Louis Maje, from Rincon, San Diego County, who though not belonging to our people, was given a piece of land by Stanley. This man Maje was and is a bad man. At a meeting held by the people of Soboba, it was decided that he should not live on the reservation. Mr. Stanley at the time approved of the actions of the Indians, and then

later on caused the said Louis Maje to be brought back to the reservation, and advocated Maje's staying on the reservation, and advocated his cause at Washington, on the ground that Maje had married one of the women of the Soboba tribe. Maje was not married to the woman at all.

Affiant further says, that Stanley interferes with the rights of the people of the tribe to elect their own officers. For instance, during the month of June, 1911, following Superintendent Stanley's advice, the people got together to name a Captain and a Judge,—Stanley saying that he would name the police, himself; the people after an election, named Bernardo Resbaloso, as Captain, and another man for Judge. After we had elected Bernardo by a majority vote, Stanley would not recognize or accept him, and refused to issue a Captain's commission to him. One of the excuses he gave was that Bernardo did not speak English and was a drunkard and had no work. Affiant further says, that although these objections were made by Stanley to Bernardo, that he, Stanley, has had a man by the name of Luterio as Captain, and that Luterio drank all the time, and was drunk during the month of September, 1911, while working on the Indian school.

Stanley is willing to treat those who agree

with him, with great partiality, and those Indians who are not in his favor, are treated severely. For instance, he had the wife of Bonifacio Causi under arrest to stay in her house for three days, and not leave the house without the permission of the Judge of the tribe, because the said wife of Bonifacio refused to be vaccinated, though she claimed that she would be willing to be vaccinated in case there was any danger of an epidemic of smallpox.

(Signed) TIOFILO PA.

I, Bonifacio Causi, and Bernardo Resbaloso, have read the foregoing affidavit, and we hereby on oath say, that the statements therein contained are true.

(Signed) BONEFACIO CABSE.

(Signed) BERNARDO RESBALOSO.

Subscribed and sworn to before me this 27th day of October, 1911.

T. S. BROWN,

Notary Public in and for the County of Riverside, State of California.

Teofilo Pa, Bonifacio Causi, and Bernardo Resbaloso, being personally known to me and personally appearing before me, T. S. Brown, a Notary Public, in and for Riverside County, California, said parties being Indians of the Saboba and Cahuilla tribes, and being made and duly and fully acquainted by an interpreter as to

the contents of the affidavit hereto attached, they, and each of them made sworn affidavit as to the truthfulness of the statements therein made.

Subscribed and sworn to before me, this 27th day of October, 1911.

(Signed) T. S. BROWN,
Notary Public."

The court erred in admitting as evidence a certain letter dated February 20th, 1912, addressed to Leonicio Lugo by C. F. Hauke, Second Assistant Commissioner, together with a letter apparently addressed by the superintendent of the Soboba Indian School to Leonicio Lugo, one of the defendants. These were introduced as Exhibits 9 and 9A by plaintiff. (R. 68-69-70).

"Feb. 20, 1912.

Mr. Leonicio Lugo, Through Superintendent
Soboba Indian School, San Jacinto, California.

Sir: Under date of December 12, 1911, the Office acknowledged the receipt of your letter of October 25, whereby you submitted charges against Superintendent Stanley of Soboba Reservation, and advised you that when the matter should have received consideration you would be further informed.

After a careful analysis of your complaints, they appear to be altogether groundless. You say:

We are willing to get along with any man who will treat us fairly and who will have the patience to deal with us as we think we should be dealt with.

This position is altogether wrong because if Superintendents were to do exactly what the Indians want them to under all circumstances, they would be useless so far as the purpose of the Service is concerned. Superintendents are sent to guide, assist and protect the Indians to the end that their best interests shall be promoted, in the course of which it becomes necessary at times to deny certain desires of the Indians in accordance with instructions from this Office.

The fact that your people have lost posession of much of the lands that your forefathers lived on for generations is no fault of your Superintendent. You are also well aware that certain lands have been procured for your people; it is believed that these lands, if properly used, will be sufficient for their needs.

Several other matters referred to by you have been the subject of correspondence between this Office and the Superintendents of Soboba and Cahuilla Reservations on various occasions and there is no more justification for complaint concerning them than as to the two above mentioned.

The right of appointing Indian Judges and Indian Policemen is vested in this Office and not in the Indians. Only such Indians as are intelligent and honest and who are believed to be desirous of working for the real benefit of the Indians are acceptable for such positions. The Superintendent is likewise expected to see that only proper persons serve as captains of the tribe and he is wholly justified in withholding a commission from any Indian elected to that position who does not have the proper qualifications. The captains and leaders of the tribe should be intelligent and progressive men who are anxious to attain the standards of the white man and who will accordingly be an uplift to their people.

You were discontented under former Superintendent Swayne and appear to be no better satisfied now. You have made numerous complaints to the Office, none of which have ever been found to be correct, and you have been the subject of a very unfavorable report by one of the Inspecting officials who visited the reservation, therefore you are advised that henceforth the Office will expect you to cease your efforts to create dissatisfaction and unrest among the Indians and to understand that no exceptions to the Superintendent's authority will be made with respect to yourself; in other words, you

are advised that just as long as you remain on the reservation under the control of the Superintendent at Soboba you will be subject to his authority.

The Superintendent will treat you fairly and explain any matter concerning the affairs of the Indians about which you may desire information if you will make your request in the proper manner.

The Office regrets that it is necessary to write you a letter such as the foregoing and trusts that you will so conduct yourself as to give no further cause for complaint.

Respectfully,

(Signed) C. F. HAUKE,

Second Assistant Commissioner.

"Soboba Indian School, California.

San Jacinto, California, February 26, 1912.

Mr. Leonicio Lugo, Cahuilla, California.

Sir: I am herewith handing you a letter this day received from the Indian Office. The same is quite clear and the contents of same should be read very carefully by you; and I trust you will endeavor to work harmoniously with this office for the betterment of yourself and the people of the Cahuilla reservation.

Very respectfully,

_____ _____,

Superintendent."

The court committed an error when he allowed Mrs. Adda A. Light to testify that in 1907 she had seen Francisco Lubo, one of the defendants, near Mr. Stanley's house, six years before the trial, and to testify to the declarations and acts of said Lubo, as follows:

"I remember being there on a Saturday afternoon, about the 20th of November, 1907. I used to know an Indian by the name of Francisco Lubo. I saw him there on that day. I was in the house. * * * (R. 81). Francisco Lubo was standing on the hill, waving his arms and talking. He came down the hill and I fastened the doors and windows while Mrs. Stanley called Mr. Stanley and by that time he had come to the side of the house. By that time the children had come inside. I called them in before I had fastened the doors. I do not understand Spanish. I understood when he called 'Stanley, Stanley.' He stayed outside about 15 minutes. He was standing leaning over the fence, waving his arms and talking."

(R. 82).

Following this testimony of Mrs. Light the court allowed Arnold Archibald Stanley, 13 years of age at the time of the trial to testify as to what Francisco Lubo, one of the defendants, had said in 1907; evidently at the time

Mrs. Adda Light said she saw him. Arnold Stanley testified that Lubo had said:

"Come out here Stanley, I am going to kill you."

(R. 82-83).

III.

PLAINTIFFS IN ERROR ARE CITIZENS OF THE STATE OF CALIFORNIA AND OF THE UNITED STATES

It is conceded that plaintiffs in error are natives of California, and are generally known as Mission Indians. Our contention is that these California Indians were citizens of the Republic of Mexico. The ancestors of the plaintiffs in error were inhabitants and citizens of that republic, and passed under the jurisdiction of the United States, together with other inhabitants of California, when that portion of the territory ceded by Mexico became a part of the American Union.

Indians under Mexican law were and are citizens of Mexico.

United States vs. Ritchie, 58 U. S. 54, 17 H. 525.

United States vs. Joseph, 94 U. S. 618.

Territory vs. Persons, 78 Pac. 309.

In the case of the United States vs. Ritchie, the Supreme Court observed:

"But as a race, we think it impossible to deny, that under the Constitution and laws of the country, no distinction was made as to the rights of citizenship, and the privileges belonging to it, between this and the European or Spanish blood. Equality between them, as we have seen, has been repeatedly affirmed in the most solemn acts of the Government."

In the case of Boyd vs. Thayer, the Supreme Court said: "By the Eighth Article of the treaty with Mexico in 1848, those Mexicans who remained in the Territory ceded, and who did not declare within one year their intention to remain Mexican citizens, were to be deemed citizens of the United States.

Boyd vs. Thayer, 143 U. S. 169.

If there should be any doubt as to whether the Indians in Mexico were Mexican citizens we have but to turn to the pages of history for an answer. The priest Hidalgo, who started the revolution, who really struck the first blow at the power of Spain in Mexico, Morelos, the brains of that revolution, Guerrero, Matamoros, and in fact nearly all of the minor leaders were of Indian blood, and the largest portion of their armies were Indians. This being the fact it is

absurd to think that an Indian born on Mexican soil would be denied the right of citizenship in the country of his birth.

The State of California was never a territory of the United States in the sense that New Mexico, Arizona and Nevada were. California was not prepared for admission by the usual initiatory stage of territorial existence,—it was a portion of Mexico acquired by the United States which demanded admission into the Union upon an equal footing with all the other states.

The effect of incorporating a state into the Union upon an equal footing in all respects whatever with the original states, is to render its condition such as it would have been had the new state been a party to the adoption of the Constitution of the United States. To be a state of the Union on an equal footing in all respects whatever with those states which became members of the Union by their own voluntary ratification of the Constitution which created it, is to be entitled to all the rights and privileges which would result from entrance into the Union, in the mode prescribed by the Constitution for its own primordial establishment.

The fathers of plaintiffs in error being citizens of the Mexican Republic, who failed to elect to retain their character as Mexican citizens

and who resided in the ceded territory became by force of the treaty citizens of the United States.

The treaty of Guadalupe Hidalgo provides:

ARTICLE VIII.

"Mexicans now established in territories previously belonging to Mexico and who remain for the future within the limits of the United States as defined by the present treaty, shall be free to continue where they now reside or to remove at any time to the Mexican Republic, retaining the property which they possess in the said territories or disposing thereof, and removing the proceeds wherever they please without their being subjected on this account to any contribution tax or charge whatever. Those who shall prefer to remain in the said territories may either retain the title and rights of Mexican citizens, or to acquire those of citizens of the United States. But they shall be under the obligation to make their election within one year from the date of the exchange of the ratification of this Treaty, and those who shall remain in the said territories after the expiration of that year without having declared their intention to retain the character of Mexicans, shall be considered to have elected to become citizens of the United States."

The Ninth Article of said Treaty provides as follows:

"Mexicans who, in the territories aforesaid, shall not preserve the character of citizens of the Mexican Republic conformably with what is stipulated in the preceding Article, shall be incorporated in the Union of the United States and be admitted at the proper time (to be judged by the Congress of the United States) to the enjoyment of all the rights of citizens of the United States according to the principles of the Constitution; and in the meantime shall be maintained and protected in the free enjoyment of their liberty and property, and secured in the free enjoyment of their liberty and property, and secured in the free exercise of their religion without restriction."

In the said territories, property of every kind, now belonging to Mexicans not established there, shall be inviolably respected. The present owners, the heirs of these, and all Mexicans who may hereafter acquire said property by contract, shall enjoy, with respect to it, guarantees equally ample as if the same belonged to citizens of the United States.

9 U. S. Statutes, page 929.

The admission of California as a state made all the people residing in the territory, citizens

of the United States, and of the State of California.

9 United States Statutes at Large, 452.

"A citizen of the United States, residing in any State of the Union is a citizen of that State," said Mr. Chief Justice Marshall in Gassies vs. Ballon. 6 Pet. 761-2.

The admission of California into the Union as a state upon equal terms with the original states, carries with it the right of citizenship.

Boyd vs. Thayer, 143 U. S. 137, 169.

People vs. De la Guerra, 40 Cal. 311.

Ex parte Sloan, 4 Sawyer, 43.

Painter vs. Ives, 4 Neb. 122.

The Supreme Court of California, speaking through Mr. Justice Temple, has this to say on the subject:

"The natural consequence of the cession of the Territory by Mexico, and its acquisition by the United States, would be that the allegiance of the inhabitants who remained in it would be transferred to the new sovereign. By the stipulation of the treaty, however, three courses were left open to the inhabitants. One was to remove to the Republic of Mexico; in which event they would, of course, continue to be citizens of Mexi-

co: the second was to remain in the ceded Territory, and retain the title and rights of Mexican citizens; the third, to become citizens of the United States.

"That the treaty was intended to operate directly and of itself to fix the status of those inhabitants, does not admit of a doubt. That it had that effect, so far as those who elected to remain citizens of Mexico are concerned, is obvious, and there is no reason for a different construction as to those who elected to become citizens of the United States. In fact, this would have been the natural consequence of the treaty (so far as was possible under our form of government), and it required this special treaty stipulation to enable the inhabitants to remain in the ceded territory and owe no allegiance to the new Government. But for this provision the Mexicans who remained would not have been considered aliens, but would have been vested with such rights of citizenship as can be conferred upon the inhabitants of a Territory who are not citizens of any of the States of the Union. But, by the terms of the treaty; those who did not elect to remain citizens of Mexico, lost their rights as Mexican citizens, at least as soon as the election was made, and the conclusion is irresistable that they acquired (so far as was possible) the rights of citizens of the

United States at the time they lost those of Mexican citizens; otherwise they remained a people without a country."

People vs. De la Guerra, 40 Cal. 340.

Again the Court held on the subject:

"Having admitted into the Union a State, of which these inhabitants were constituent members, Congress could do no more. It has conferred upon them all the rights of citizens, or rather it has recognized these rights in the only mode provided by the Constitution which was applicable to them."

People vs. De la Guerra, 40 Cal. 340.

STATE OF CALIFORNIA HAS JURISDICTION OVER ALL CRIMES COMMITTED WITHIN THE STATE.

The State of California has exclusive jurisdiction over all crimes, excluding those which are reserved to the United States in the Constitution, committed within its limits, unless the State delegates such jurisdiction, or Congress, in the creation of the State in the enabling act reserves jurisdiction over some portion of the proposed state.

United States v. McBratney, 104 U. S. 621.

Draper vs. United States, 164 U. S. 240.

In re Heff, 197 U. S. 488.

"The state has exclusive jurisdiction to punish its citizens for crime committed within the state."

United States vs. Bailey, 1 McLean, 231.

United States vs. Cosna, 1 McLean, 254.

Keller vs. United States, 203 U. S. 138.

Without doubt, it will be argued that the jurisdiction of the United States to punish an Indian is based upon the fact that the Indian is the ward of the Government, but we respectfully contend that if the Indians were citizens of Mexico at the time California was ceded to the United States, then they came into the Union when California was admitted as a state as citizens of the United States; consequently the United States Courts have no jurisdiction of an offense even though committed on a reservation by an Indian.

Even though the United States has assumed jurisdiction over the Indians in California, we cannot, escape the conclusion that jurisdiction must, in fact, exist by force of law or a court is without jurisdiction to enter a judgment in any case.

As those parties who have heretofore been tried in the United States Courts submitted to the jurisdiction, it has been a jurisdiction which has been exercised by consent, and which can in no way involve the rights of these defendants, if, in fact, the court is without jurisdiction.

These defendants were not parties to the other suits and in truth were wholly ignorant of their existence, but even though they knew of every case that was tried in the United States they were without power to come in and object.

The fact that the United States has exercised jurisdiction over the Indians for fifty years, and treated them as wards of the Government does not deprive these defendants of a right conferred on them by treaty as the jurisdiction must exist in fact, not by inference.

The appointment of Agents by the Government does not in itself make the Indians wards of the Government. As was said in the case of the United States vs. Joseph:

"We have been urged by counsel in view of these questions to determine that they are citizens of the United States and of New Mexico, but abiding by the rule, which we think ought always to govern this court, to decide nothing beyond what is necessary to the judgment we are to render, we leave that question until it has been made in some case where

the rights of citizenship are necessarily involved. But we have not hesitated in saying that their status is not in the face of the facts we have stated to be determined solely by the circumstances that some officer of the Government has appointed for them an Agent."

United States vs. Joseph, 94 U. S. 618.

Again the Supreme Court of New Mexico in the case of Territory vs. Persons, etc., in reference to this point said:

"The furnishing of Agents and attorneys has been a mere gratuity on the part of the Government."

Territory vs. Persons, 76 Pac. R. 309.

United States vs. Joseph, 94 U. S. 618.

It is true that the State of California ceded to the United States lands within an Indian Reservation belonging to the United States for the use of said reservation, but there is nothing in the grant surrendering the jurisdiction of the state to the United States. The lands were granted for the use of said reservation.

"Section 1. All lands belonging to this state, and situated within any Indian Reservation belonging to the United States, in this state, are hereby granted to the United States, for the use of such Reservation; provided, that nothing

herein contained shall be construed to affect in any manner the rights of parties who have taken up or purchased any such lands belonging to the state, whether patents have issued therefor or not."

Cal. Statute 1862, 552.

Another Statute of California may be cited. It was referred to by the United States District Attorney in answer to the contention of plaintiffs in error in the District Court, but we think that it upholds our contention that California did not cede the right to administer the criminal laws of the state within its borders.

"Section 1. The State of California hereby cedes to the United States of America exclusive jurisdiction over such piece or parcel of land as may have been or may be hereafter ceded or conveyed to the United States, during the time the United States shall be or remain the owner thereof, for all purposes except the administration of the criminal laws of this state and the service of civil process therein."

Cal. Statute 1891, p. 262.

It is also true that the State of California exercised through its courts, jurisdiction over crimes committed by the Indians. In the early days of the history of the state, the legislature

passed a law giving Justices of the Peace jurisdiction over all offenses for or against Indians in their respective townships.

The portions of the Statute bearing on this point are as follows:

"Section 1. Justices of the Peace shall have jurisdiction in all cases of complaints by, for, or against Indians, in their respective townships in this state."

"Section 2. Persons and proprietors of lands on which Indians are residing, shall permit such Indians peaceably to reside on such lands, unmolested in the pursuit of their usual avocations for the maintenance of themselves and families: Provided, the white person or proprietor in possession of such lands may apply to a justice of the peace in the township where the Indians reside, to set off to such Indians a certain amount of land, and, on such application, the justice shall set off a sufficient amount of land for the necessary wants of such Indians, including the site of their village or residence, if they so prefer it; and in no case shall such selection be made to the prejudice of such Indians, nor shall they be forced to abandon their homes or villages where they have resided for a number of years; and either party feeling themselves aggrieved, can appeal to the county court from the decision of the justice: and then divided, a record shall be made of the lands so

set off in the court so dividing them, and the Indians shall be permitted to remain thereon until otherwise provided for." * * * *

California Statutes 1850, P. 822. Passed April 22nd, 1850.

This statute demonstrates the fact that the state of California exercised jurisdiction over offenses committed by Indians.

The Supreme Court of the State of California in construing the act of 1850, and long after California was admitted into the Union, has the following to say:

"The act of 1850 for the protection and punishment of Indians, was, in our opinion, obviously intended to be applied to Indians in tribes or when living in separate communities, or countries, and not to a case where an Indian has been living as in this case for years among white men."

People vs. Juan Antonio, 27 Cal. 405.

The framers of the California Constitution of 1849 realized that the Indians of California were citizens, otherwise how can we account for the following:

"ARTICLE 2.

RIGHT OF SUFFRAGE.

Section 1. Every white male citizen of the United States, and every white male citizen of Mexico who shall have elected to become a citizen of the United States, under the treaty of peace exchanged and ratified at Queretaro, on the thirtieth day of May, Eighteen hundred and forty-eight, of the age of twenty-one years, who shall have been a resident of the state six months next preceding the election, and the county or district in which he claims his vote thirty days, shall be entitled to vote at all elections which are now or hereafter may be authorized by law; *provided, that nothing herein contained shall be construed to prevent the Legislature, by a two-thirds concurrent vote, from admitting to the right of suffrage Indians, in such special cases as such a proportion of the Legislative body may deem just and proper.*" (Italics ours).

Section I, Article II, Constitution of California, 1849.

That the apparent discrimination in the California constitution of 1849 is not against the Indian is evident when we look at the conditions and ideas prevailing at the time of its

adoption. The feeling against the Negro and the influence in California of the particular party in power in the United States at the time, undoubtedly accounts for this provision aimed at the Negro being grafted on the constitution of California.

Evidently the framers of the California constitution realized that the Indians in the ceded territory were citizens, and not wards of the Mexican Government, and that they had the status of citizens of California, otherwise the provision of the constitution that nothing therein contained should prevent the Legislature from admitting to the right of suffrage Indians or descendants of Indians, would not have been adopted. If the Indians of California at the time were wards of the United States, or of the State, it stands to reason that the framers of that constitution would not have made a special proviso which practically guaranteed the Indian all the rights that citizens of California of the white race were entitled to.

It is claimed that the question of citizenship is a political one which the courts of the land are precluded from interfering with. We respectfully contend that this idea should not prevail. If Congress has seen fit to assume such control of the Indians of California that it had no right to assume, that control has been

on the theory that might makes right, and not that Congress had any legal right to exercise a guardianship over them. Should not the courts interfere then in the interest of Justice?

In re Heff bears on this contention. The Court in that case observes:

"But it is contended that, although the United States may not punish under the police power the sale of liquor within a state by one citizen to another, it has power to punish such sale if the purchaser is an Indian. And the power to do this is traced to that clause of Sec. 8, Art. 1, of the Constitution which empowers Congress 'to regulate commerce with foreign nations, and among the several states, and with the Indian tribes.' It is said that commerce with the Indian tribes includes commerce with the members thereof, and Congress, having power to regulate commerce between the white men and the Indians, continues to retain that power, although it has provided that the Indian shall have the benefit of and be subject to the civil and criminal laws of the state, and shall be a citizen of the United States, and therefore a citizen of the state. But the logic of this argument implies that the United States can never release itself from the obligations of guardianship; that, so long as an individual is an Indian by descent, Congress, although it may have

granted all the rights and privileges of national, and therefore state, citizenship, the benefits and burdens of the laws of the state, may at any time repudiate this action and reassume its guardianship, and prevent the Indian from enjoying the benefit of the laws of the state, and release him from obligations of obedience thereto. Can it be that because one has Indian, and only Indian blood, in his veins, he is to be forever one of a special class over whom the general government may, in its discretion, assume the rights of guardianship which it has once abandoned, and this whether the state or the individual himself consents? We think the reach to which this argument goes demonstrates that it is unsound."

Re Heff, 197 U. S. L. E. 49, 856.

When these Indians came into the Union with the Admission of California, they had a status given them by the treaty that their country had entered into with the United States. Consequently any assumption of control by Congress over them could not take away that which the country had by a most solemn obligation promised to give, and did give.

It will not be presumed, however, that Congress intended to violate the provisions of the treaty.

United States vs. Gullin, 176 U. S. 459.

Chew Heong, vs. United States, 112 U. S. 536.

And the general rules apply that repeals by implication are not favored.

Chew Heong vs. United States, 112 U. S. 536.

The constitution and treaties are the supreme law of the land.

Ware vs. Hylton, 3 Dall. 109.

Opell vs. Shoup, 100 Iowa 407.

We are not unmindful of the fact that our views in reference to the citizenship of the California Indians seem to conflict with those held in late cases of the Supreme Court, but we believe that these cases are clearly distinguishable from the one at bar. For instance:

The case of Hallowell vs. United States, 221 U. S. 317, is to be distinguished from the case at bar for the reason that in the case at bar these defendant Indians and their ancestors were never dependent on the United States under the same conditions as the uncivilized Indians who occupied other portions of the United States, or as was the case of the Omaha Indians in the Hallowell case prior to their re-

ceiving allottments of land and the privileges of citizenship which accompanied the same. As the California Indians were citizens of the Republic of Mexico and became full fledged citizens of the United States at the time that California became an integral part of the United States, the Government of the United States never had the same right of guardianship and control over them that it had over the other tribes of Indians who were native inhabitants of its domain.

While it is true that the Government of the United States has exercised acts of tutelage and guardianship over the California Indians, this fact alone could not affect their status as they had once been admitted as full fledged citizens of the United States.

United States vs. Joseph, 94 U. S. 618.

In the case of Hallowell the principle laid down by the court seems to be that inasmuch as the United States retained the title of the lands allotted until the twenty-five year period had expired, that during said period it had jurisdiction over said territory for the purpose of protecting such Indians from the evil results of intoxicating liquors being introduced therein and that the citizenship conferred upon the Indians by the act of conferring the allotment was in effect qualified to this extent.

It is to be further noticed that in the Hallowell case the act prohibiting the introduction of liquor was made especially applicable to these allotments while the title still remained in the United States.

Also in the case of the United States vs. Suttong, 215 U. S. 201, it was held that the fact that the State of Washington had disclaimed jurisdiction over the Indians' lands within its borders so that the same remained under the absolute jurisdiction and control of Congress of the United States that this fact did not deprive the State of the right of punishing crimes committed on such reservation, by other than Indians or against Indians.

In the case of the United States vs. Celestine, 215 U. S. 278, the United States had jurisdiction by virtue of the treaty with the Omaha and the treaty of Pt. Elliott.

We think that in the case at bar the defendant Indians and their ancestors cannot be classed as the Indians referred to in the cases above cited for the reason that the California Indians entered the Union as full fledged citizen, while in the case of other tribal Indians under consideration, the citizenship which they eventually acquired was by gift of the United States and subject to such restrictions and qualications as the donor might attach to it.

It has been claimed that the Indians are a dependent and inferior people, and indeed when one realizes the conflicting opinions on the subject of the Indian, it seems, he must necessarily come to the conclusion that the idea of inferiority and dependency is the only excuse the Government has for treating the Indians, at least the California Indians, as wards.

The Indians, of California, it is true, were found a benighted race by the Missionaries, but were raised from their condition, until they became adroit and excellent workmen. They were brought under the influences of the Christian religion. Even today they have their chapels, where in the absence of the priest, some one among them leads in prayer.

Whether the policy of Congress in keeping these people in a condition of pupilage is just, is in our opinion doubtful. It is questionable whether this policy of guardian and ward is conductive to the development of the Indian, or to his degeneration into a helpless being.

These Indians enjoyed a fair degree of civilization before the admission of California as a state and, soon after the admission of California, we have the evidence of an American citizen in reference to it. Mr. Charles H. Thomas, a

witness on behalf of defendants (plaintiffs in error) testified as follows in reference to these Indians:

"At the time when I first knew them in 1861, or thereabouts, they had both cattle and horses, and some goats and sheep. They made coarse blankets. The women used to make this drawn work. When I went there the first time I stopped at the place of old Victoriano. He was one of the old captains, and the bed that I slept on had lace work that wide (indicating) on the pillow slips and sheets. His granddaughter made it and her name was Rosario. The inhabitants lived in adobe houses. They cultivated the soil in small patches. Each Indian got whatever he chose, five and as high as ten acres. They raised corn, pumpkins, beans and barley. * * * The priest names some Indian to perform the ceremonies of marriage and baptism and funeral services that he chooses, and he learns how to recite it, the same as they do, but if they had any secret religion I don't know anything about it."

(Testimony Charles H. Thomas, R. 151-152-153).

THE CONSTITUTIONAL RIGHT OF APAPAS NOT TO BE COMPELLED TO INCRIMINATE HIMSELF WAS VIOLATED

Assignment of error 36 involving the point that Apapas' immunity, from self incrimination guaranteed under the fifth amendment to the constitution, was violated, is sufficient to give this court jurisdiction of this case and to dispose of all points raised, notwithstanding the question of jurisdiction was not properly certified. In the case of Cincinnati etc. vs Thieband, 177 U. S. 615, the following language is used:

"When our jurisdiction is invoked under section five of the judiciary act of March 3rd, 1891, (now Section 238 Judicial Code), on the ground that the case follows within the fourth, fifth or sixth of the classes of cases therein enumerated, it must appear that a title, right, privilege, or immunity was claimed under the constitution, and a definite issue in respect to the possession of the right must be distinctly deducible from the record;—and it is not sufficient that the point is raised in the assignment of errors. (Citing cases therefor.)" This point is brought to the supreme court under subdivision four of section five of said act of March 3rd, 1891,

(now section 238 Judicial Code) which subdivision reads as follows: "In any case that involves the construction or application of the constitution of the United States." It is true that this question is not certified, but since the allowance of the writ of error is general, the following language used in the case of *Chapell vs. the United States*, 160 U. S. 499, is applicable to the present case. Said language is as follows: "But no question of jurisdiction having been separately certified or specified, and the writ of error having been allowed without restriction or qualification, this court, under the other clause of the statute above cited, has appellate jurisdiction of this case as one in which the constitutionality of a law of the United States was drawn in question; and, having acquired jurisdiction under this clause, has the power to dispose, not merely of the constitutionality of the question, but of the entire case, including all questions, whether of jurisdiction or of merits. (Citing cases therefor.)"

In this case last mentioned the constitutionality of a law of the United States was drawn in question, whereas in the present case the construction or application of the constitution of the United States is involved and in either case the supreme court acquires jurisdiction as was held in *Cincinnati etc. vs. Thiebaud*, supra. The 36th assignment of error is not based on the

hearsay rule, but as shown by the record, is based on the ground that no proper foundation for a confession was laid.

The testimony set forth in second assignment of error shows what the witness Durlin answered over the objection of the defendants, that no proper foundation had been laid for a confession and that same was not shown to be voluntary.

In the case of the *People vs. Quan Gim Gow*, Vol. 17 Cal. App. Dec., page 786, 789, it is stated, "That fact that the questioning was done by police officers presents an important item for consideration in determining whether the admissions extracted were of a voluntary character. As is said in *Bram vs. United States*, 168 U. S. 540: 'Whatever be the rule in this regard in England, however, it is certain that where a confession is elicited by the questions of a policeman, the fact of its having been so obtained it is conceded may be an important element in determining whether the answers of the prisoner were voluntary. The attempt on the part of a police officer to obtain a confession by interrogating has been often reproved by the English courts as approaching dangerously near to a violation of the rule protecting the accused from being compelled to testify against himself.'"

The case of *Bram vs. United States*, 168 U. S. 532, etasblishes as shown by the syllabi the following propositions:

1. Where a conversation with the accused is offered in evidence as a confession, and is admissable only as a confession, the measure of proof resulting from it is not to be considered in determining its admissibility.

2. The use which was made of the prisoner's statement precludes the state from saying that it was not used to his prejudice.

3. The prosecution cannot offer illegal evidence to prove guilt, and then, for the purpose of avoiding the consequence of its wrongful admission, be heard to assert that the evidence was not prejudicial because it did not tend to prove guilt.

4. A confession which is not voluntary is not admissible in evidence under the Fifth Amendment to the Federal Constitution, declaring that no person shall be compelled in a criminal case to be a witness against himself.

5. The voluntary character of an alleged confession depends on the question whether the making of the statement was voluntary and without inducement or compulsion, and not whether the particular communications contained in it were voluntary or not.

6. The mere fact that a confession is made to

a police officer while the accused is under arrest, in or out of prison, or is drawn out by his questions, does not necessarily render the confession involuntary; but, as one of the circumstances, such imprisonment or interrogation may be taken into account in determining whether or not the statements made by the prisoner are voluntary.

Therefore we maintain that the constitutional right of the defendant Apapas not to be compelled to incriminate himself, was violated by the admission and testimony of J. F. Durlin, above given when defendant was asked if he had seen the gun before and he answered "Si" meaning "Yes." All the testimony above set forth in regard to this gun after the admission of defendant Apapas, that he had seen the gun before, was thus connected up and given to the jury. The measure of proof resulting from this admission is not to be considered, as is well settled by the Bram case above cited. At the time of this confession the defendant was in the presence of the police officers mentioned above and in jail, and it was no where shown that defendant was informed through the intrepeter that he did not have to answer if he didn't want to, nor was he informed of his other rights through the interpreter, nor was he informed that the admission would be used against him, all of which facts defendant thinks ade-

quately show that error was committed by the court sufficient to cause a reversal of this case.

3.

REFUSAL OF THE COURT TO GRANT MOTION IN ARREST OF JUDGMENT

After the verdict of the jury and before the sentence was pronounced the defendants made a motion in Arrest of Judgment. It is our contention that this motion should have been granted for the following reasons:

The evidence did not show that the defendants were wards of the government. While they were referred to as Indians living at Cahuilla it was not proven that they were wards of the government. The mere fact that they were Indians did not necessarily make them wards of the government. In California there are some Indians who enjoy the right of suffrage, who are citizens and who do not live upon any reservation; and they are not wards of the government.

The court had no jurisdiction to try them; a point that had been urged and raised by the defendants.

While the District Court of the United States may have had jurisdiction of the offense of homicide, still the defendants contended that it did

not have jurisdiction of them, and certainly in this respect the indictment failed to charge any offense under a Statute of the United States.'

4.

REFUSAL OF THE COURT TO GRANT DEFENDANTS' MOTION FOR A NEW TRIAL

The defendants made a motion for a new trial before sentence was pronounced, on the following grounds.

1. That the jury received evidence out of court other than that resulting from a view of the premises.

3. On account of errors of law arising during the course of this trial and excepted to by the defendants.

4. That the verdict is contrary to law.

5. That the said verdict is contrary to the evidence and is not sustained thereby.

6. On account of misconduct of the jurors during the trial.

7. On account of misconduct of the Attorney representing the plaintiff in the case.

(R. 246-247).

We are not unconscious of the fact that it

has been held that an order denying a motion for a new trial should not be reviewed upon a writ of error. But, as this motion contained grounds which may be reviewed by the Supreme Court upon a writ of error we are obliged to present them in said motion. The fact that they are so presented will not prevent their consideration by the court.

Holt vs. United States 218, S. C. R. 251.

The misconduct of the jury assigned was the reading of a certain article in the Los Angeles Times, and the reading of other newspapers while sitting and deliberating on the case and before they arrived at a verdict. The article follows:—

"Fate of Cahuilla Bucks in doubt over night."

"A federal jury is endeavoring to reach a verdict in a case of a number of Indians from the Cahuilla reservation in Riverside County charged with the killing of the late superintendent, William H. Stanley, last May. The fate of the bucks was put in the jurymen's hands at eleven o'clock yesterday morning and at five o'clock in the afternoon they had not yet agreed. Court was adjourned until 10:30 this morning. The accused are: Ambrosia Apapas, Francisco Lubo, Charley Arenas, Patrick Casero, Agapito Cornelio, Pio Cervantes and Pablino Lubo and Leon-

icio Lugo. United States District Judge Rudkin in his charge gave particular attention to the definition of the law on the subject of conspiracy and just what is necessary to establish that allegation against the defendants. He emphasized that statement that the jury should consider the evidence in the case without regard to whether the prisoners were Indians or white men, as there is but one law for all. At four o'clock the jurors sent word to Judge Rudkin that they desired additional instructions. Later information was brought down that they would soon agree, but at five o'clock another message was sent that they had not yet agreed, and Judge Rudkin adjourned until this morning at 10:30. It is believed Ambrosio Apapas will be found guilty under the indictment, but there is much doubt as to the ability of the jurors to agree on the conspiracy charge against the others, with the possible exception of Leonicio Lugo and Francisco Lubo. Other indictments still remain against the defendants. Apapas and his fellow Cahuillans must answer for making an assault with intent to murder Celso Serrano, a forest guard, Francisco Lubo for assault with a deadly weapon upon Celso Serrano, (all ten for making an assault with a deadly weapon upon Celso Serrano), and striking and beating John Largo, an Indian policeman."

Mr. Estudillo: We have the affidavit of Apapas himself, which is as follows:

"Ambrosio Apapas, being duly sworn, deposes and says that he is one of the defendants in the above entitled cause: that on the 13th day of March, during a recess of the court; the jury was excused and stepped outside of the court-room into the hall, that while out in the hall affiant saw four of the members of the said jury talking to Francis Swayne; that he does not know the names of the jurors, but has been informed that three of them were Jurors Houser, Skellenger and Ignacio Mott, that he does not know the name of the other juror, but believes it to be W. H. Cline. Affiant states on information and belief that the conversation of the said jurors with the said Francis Swayne was in reference to the case. Affiant further states that Francis Swayne was a witness for the plaintiff in the above entitled cause."

It was stipulated that the jurors mentioned in the affidavit admitted that they had talked to Mr. Swayne, but that they had not talked about the case. But in reference to some land in Utah. That part of the affidavit which alleges on information and belief that the conversation had by the jurors with Swayne is substantially withdrawn, but not the fact that the jurors were talking to a witness of the prosecution.

This article tended to influence the jurors. It was prejudicial to the defendants. It conveyed information to the jury that there were other indictments against the defendants. It told the jurors that the defendants must answer for making an assault with intent to murder Celso Serrano, a forest guard. It was prejudicial to two of the defendants in particular, Leonicio Lugo and Francisco Lubo, for it intimated to the jurors that these two defendants were guilty of a conspiracy. It was certainly receiving evidence out of court. The jurors in talking to witnesses for the prosecution as admitted (they had talked to Mr. Swayne) does not convince one of the righteousness of their ultimate conclusion.

MISCONDUCT OF THE ATTORNEY FOR THE GOVERNMENT.

Mr. Robinson during his address to the jury made the following remarks, which were assigned as error by the defendants.

"The result of that plan if carried out as it was started would probably have been that Stanley would have been humiliated, he would have been ignominiously treated and taken to the edge of the reservation and told to get off and stay off; but instead of Stanley turning up as they expected as the first one on the scene, the

policeman turned up; they had to be disposed of and were disposed of and as soon as they were the most natural thing in the world for this man who went there so cooly and calmly and collected, a man who knew exactly what he did according to the testimony of those witnesses, was to turn to the object of their hatred. Stanley was standing there in the room and did nothing—turned to the object of their hatred. His blood was inflamed and the plot was on foot, and they had taken the first steps, and in the rush of it he naturally and instinctively turned to the man they hated and had planned to malaign and abuse and seeing him there went after him with his gun."

R. 248-249.

These remarks were excepted to, but Mr. Robinson insisted that it was a matter of the construction of the evidence. Upon being admonished by the court Mr. Robinson repeated: "Your Honor does not mean the jury to understand they will pay no attention to what I say now as argument?"

R. 249.

Again in the cross-examination of Callisto Tortes Mr. Robinson's conduct was prejudicial to at least one of the defendants, Leonicio Lugo

Mr. Robinson asked the following question: "Didn't you know when you went into that school-room from conversations you had with Leonicio Lugo, that it was planned that you being a stranger and Juan Costa, the judge and Juanito Casero should stay inside of the school-room and not see what happened and that Leonicio Lugo should get outside of the gate so he would not see anything that happened?" This question was objected to as incompetent, irrelevant and immaterial and assuming a state of facts not presented in evidence.

R. 197.

We respectfully insist that this question, was highly prejudicial to the defendant Leonicio Lugo in particular and to the other defendants in general. There was no evidence that this witness had had any conversation with Leonicio Lugo. There was no evidence that it had been planned that witness should stay inside of school-room and not see what happened. Counsel for the Government assumed facts and put them in the form of a question which had but one object in view and that was to prejudice the jury against the defendant Leonicio Lugo.

In the case of Williams vs. The United States 168 U. S. 382, the representative of the Government made the remark in open court and

presumably in the hearing of the jury: "No doubt every Chinese woman who did not pay Williams was sent back."

In reference to this the Supreme Court said: "The observation made by the prosecuting attorney was under the circumstances, highly improper and not having been withdrawn, and the objections to it being overruled by the court, it tended to prejudice the rights of the accused to a fair and impartial trial."

Williams vs. United States 168 U. S. 382.

In the case of Hall vs. United States a judgment of the trial court was reversed because the district attorney was permitted to make an argument against the objection of the defendant, not based on evidence which tended to prejudice the jury against the defendant.

Hall vs. United States 150 U. S. 76.

See also People vs. Mull, 167 New York 247.

Lowdon vs. United States, 149 Fed. 677.

5.

THE REFUSAL OF THE COURT TO STRIKE OUT EVIDENCE IN REFENENCE TO DEFENDANTS OTHER THAN APAPAS, ON THE GROUNDS THAT THERE WAS NO CONSPIRACY OR EVIDENCE CONNECTING SAID DEFENDANTS OTHER THAN APAPAS, WITH THE DEATH OF MR. STANLEY.

It will be necessary for us in urging this point to state briefly what the evidence was.

The evidence of the plaintiff was that Mr. Stanley was shot at Cahuilla on the 2nd day of May, 1912. That Mr. Stanley, with an Indian policeman by the name of Celso Serrano, and a man by the name of Pederson had driven from San Jacinto to Cahuilla Reservation on the 1st of May. That there was a dance at the Cahuilla Reservation the night of the 1st of May, which the Indian policeman, Celso Serrano, attended. The place where the dance was held was about 300 yards from the school house. That on the morning of the 2nd of May, Leonicio Lugo went to the door of Mr. Stevens' residence and said, "Good morning" and asked if Mr. Stanley was there. That Mr. Stanley came

out and said "Good morning" to Leonicio Lugo and they shook hands. That Leonicio Lugo said, "Can I talk with you this morning?", and Mr. Stanley said, "Sure, talk to me any time you want to", and added "Let's go over to the school house, more room over there." That Leonicio Lugo then started for the school house and the other Indians followed him; that all of them went inside of the school house and that Mr. Stanley, Stevens and Pederson also entered the school building, as well as the Indian policeman, Celso Serrano. That Mr. Stanley stated in the school house that as soon as he got through with these people he would go out to see the lines and corners of the reservation; that he shook hands with all the Indians in the school building. That the Indians elected Ignacio Costa to act as interpreter. That Leonicio Lugo said to the interpreter, "Well, interpreter, they sent policeman to Cornelio Lubo that Stanley want to see him. You tell Stanley he have to tell me first why he want to see him." Then Mr. Stanley said, "What is Leonicio, is he an officer, or what?" In reply to this Lugo answered, "Why I am captain here of the Cahuilla tribe." To which Stanley replied, "You are nothing. You are not an officer. In Washington they don't recognize you." Then Lugo said, "I am an officer here and nobody else." That was interpreted to Mr. Stanley. That was all that was

said. Then an Indian by the name of Sanches Lubo asked Mr. Stanley if it was so that he, Stanley, had come to brand the bulls. Lubo, it seems, wanted to know if the bulls were branded who would own them, and Mr. Stanley assured him that the Government and the Indians would own them just the same. Sanches then stated that he had one bull at his place and that if Stanley was going to brand him he would have to take him away from the place. Mr. Stanley said he didn't have any authority to take the bulls away from there. Then all the Indians in the building said: "If he is going to brand them bulls he would have to take them away that day." To which Mr. Stanley replied that he couldn't do it. That he would have to write to Washington and find out and if he was given authority he would take the bulls away. Then Juanito Casero asked if Stanley was going up there and brand the calves and colts out of the Government horses and the Government bulls. Mr. Stanley replied to this that he could brand only the bulls. After Sanches talked about the bulls, Leonicio Lugo asked all those who had bulls to talk. Then Charlie Arenas, Ambrosio Apapas and Cornelio Lubo said that they had bulls which they were going to bring down to the school right there and let Mr. Stanley brand them and then they would drive them out for him from the reservation.

Leonicio Lugo stated that the bulls had been given to them by Mr. Hall. Upon this statement he was questioned by Mr. Stanley as to whether he had received any papers when he got the bulls, and when he replied "No", stated, "Well, those bulls don't belong to you." Then Pio Lubo said, "You people are talking too much and going too far. You must do what you said this morning." That was not interpreted into English. Then Pio said in the Indian language: "Let us drag him out by the hair, I will do it myself." Mr. Stanley after that gave the Indian Policeman an appointment as a guard and policeman. That act was interpreted to the Indians. Then Juan Costa said, "Now, what are we going to do about wood?" And Mr. Stanley informed them that if they wanted to chop wood to sell they would have to get a permit. Then Juan Costa said, "I don't want Celso here on the reservation. If he wants to make money off the Government, he must get off the reservation and get a job." This was interpreted to Mr. Stanley. All of this was said in the building while all were talking together and for the space of two hours. Then Agapito Lubo said, "How did the Government know from there to appoint Celso to be forest guard. He ought to put Pablino Lubo and Agapito as forest guards up here." Then Leonicio Lugo stood up, made way to the door,

and the rest of the Indians followed him. At the time that happened he was right in the school house sitting at a desk about the third seat back. When the Indians got up Mr. Stanley said something. When Cornelio Lubo started to get up Mr. Stanley said, "Cornelio, wait a minute, I want to talk with you." Cornelio didn't pay any attention to him, but went out. When Cornelio went to the door nothing happened. Cornelio went out of the door and out of the building and John (John Largo) headed him off at the door and Cornelio pushed him to one side and went out. John came back and told Stanley that Cornelio didn't want to come. Stanley said, "Go and bring him in." And John went after him. When I saw John next he was on the ground and the Indians were holding him down. When I saw John Largo he was standing on the front porch of the school. * * * * *

Six Indians were holding him down, that I saw. I did not know just who the others were. I saw Agapito kick John right back here (indicating). When I saw John down and all these Indians holding him, I went down. When I was on the steps I saw Ambrosio Apapas pulling out his gun. Ambrosio was right there at the front gate of that fence. * * * I saw Ambrosio's gun. It looked something like a

44 pistol. He pointed it at me. I don't know how he carries it but I saw him point out like this (indicating). When I saw him with a gun then I pulled my gun out and hollered to him to put his gun away. He pointed it at me. * * * * * * " (Testimony Celso Serrano, R. 110-11-12-13).

Q. By Mr. Robinson: Now, Celso, you took out your gun and Ambrosio had his gun out, what happened, what did you do?

A. "I walked straight to him and hollers to him to put his gun away. I walked right along the path here. Francisco Lubo shot and that caused me to stop. Then I shot one down, I fired the pistol down and fired another one in the air."

"Francisco Lubo tried to jump at me. Tried to grab my gun, but I went back in the crowd and then Ambrosio began to shoot at me. When he began to shoot at me I went back towards the drinking fountain. I didn't turn my back on him. While I was walking there I was shooting at him too. I didn't walk straight back, but from side to side. I fired all the shots in my gun and then after those three shots, Stanley hollered and said, "Don't shoot, come right in the house." I had five shots in my gun that day. After Mr. Stanley called that out there was more shooting. Ambrosio Apapas

shot five times. He was shooting at me while I was shooting at him. After I had finished what I had in my gun and Mr. Stanley said that, Ambrosio came out and got Francisco's gun. * * *" (Testimony Celso Serrano).

Q. Where was Francisco standing at the time Ambrosio got the gun from him?

A. He was standing right there. He turned to the fence and Ambrosio got him right there and got his gun and that is the time he walked right out of the crowd towards me. The first shot he hit me just below my heart. * * * I went back towards the rear fence and jumped over that fence and he turned around and walked right straight to the school house door. * * *" (R. 114).

"Before I got there to the east side of John Largo's house, I turned around and saw Ambrosio come out from the east side of the dining room and went outside of the east door. I didn't pay any attention to him. I was loading up my gun and he was walking. * * * I saw Ambrosio Apapas coming out of the door. I was loading up my gun when I saw the Largo woman and saw Ambrosio pointing his gun at me. It did not go off. I moved when he snapped his gun at me on the other side of the hill. I left those parts and didn't go back. I

was brought back later in the evening when the bullet was removed."

(R. 115).

On cross-examination this witness for the Government, Celso Serrano, testified:

"When Cornelio went out of the building after pushing John Largo aside, I went out. Well, I stayed there until John Largo got back into the building. Mr. Stanley said to John, "Bring Cornelio in." John Largo went out again. Then I went out of the building. I was on the walk in front of the building when I heard the first shot fired. I didn't hear any shots before I went out of the building. I saw Francisco Lubo when I first went out of the building. I did not have my gun in my hand. Before I went out Mr. Stanley said to me, "Go and help John." After drawing my gun I fired two times. Francisco Lubo was in front of me. * * * About ten feet away. I did not see Francisco Lubo drop nor his wounded leg. I was not excited, nor frightened, nor scared, nor nervous at all. I fired three shots at Ambrosio. I fired one right down to the ground where Francisco Lubo was and I fired another one up in the air. I fired one in the direction of Francisco Lugo. * * * I fired one where Francisco Lubo was, right in front of him, at his feet."

(R. 117).

The testimony of Clarence E. Chambers, another witness on behalf of the Government, shows that Patrick Casero worked for him in 1911. That he, Casero, had told Chambers that William H. Stanley had been appointed superintendent of the Cahuilla Reservation. That Patrick Casero had told him that the Cahuilla Indians would not recognize Stanley as the Government Agent, and that they would get rid of him just as soon as they had the previous Agent. (R. 121).

The testimony of Adolf Lugo on behalf of the Government is practically the same as that of Celso Serrano, with the exception that he testified that Apapas turned back and came around and shot Stanley. (R. 124).

The testimony of Richard Carl Stevens in substance is the same as that of Largo with this exception that he, Stevens, heard some shooting before he got out of the school house. Stevens further testified that Apapas got over in front of the porch and fired at them and as he, Stevens, turned to run he looked at Mr. Stanley and heard him say, "My God!" Stevens does not remember anything after that. He evidently got in the school house ahead of Mr. Stanley. (R. 132-33).

Stevens also said that all of the Indians were

talking to Mr. Stanley through the interpreter, (R. 136).

Carl Pederson, another witness on behalf of the Government, testified that Mr. Stanley asked the Indians if they had an interpreter, and that Mr. Stanley got up and asked the Indians what the purpose of the meeting was, when Leonicio Lugo got up and said, "I have been elected captain of these people, and I want to know what you want with Cornelio Lubo.' Then Mr. Stanley said, "I don't recognize your appointment as captain of these people, because you fail to work in the interests of all the people, and on my first trip up here, I offered to let you people elect your captain, or your judge and police and you refused to do so, and so I told you that the men that are now serving would continue until you were notified otherwise. * * *" (R. 138).

Mr. Pederson further testified that several in the room got up and filed out, and as they started to go out, Mr. Stanley rose up and said, "Cornelio, I want to see you." And as the man he called walked out, Stanley said to the policeman, John Largo, "John, tell Cornelio, I want to see him." John went up and put his hand on him, and he push his arm and walked right on out. John turned around and came back and said, "He won't come." Then Mr. Stanley said, "Go out and bring him in." Before I went out

on the porch Mr. Stevens got up and walked back there and said, "Somebody better help." Mr. Stanley told Celso Serrano to go out and help John to bring in Cornelio and so Celso starter outside and it was not but a short time, as soon as they got outside, shooting commenced, shots were fired. I could not say how many shots were fired out there. There were not more than five or six. I saw Ambrosio Apapas on the corner of the school house, out a ways near the fountain, simply shooting around, and he passed the school house. I was in the door way in the hall way, looking out through the door. There were others standing in the door way. I did not see that he hit anybody from the position where I was. He turned toward the porch where Mr. Stanley and Stevens were standing. * * * As Apapas came towards the porch, I did not see what he did. Just an instant there I noticed a crowd and Mr. Stanley turned to come in and Stevens rushed by him and I followed him." (R. 139).

Mr. Pederson also testified that he could not recognize some of the defendants in the school building. He had been there just once before, (R. 144).

Another witness for the Government, Anna Maria Casero, testified in substance that sometime in the past she had seen Ambrosio Apapas

with a large pistol. On cross-examination she could not say what month or what year or when it was that she saw Apapas with a gun. She said it was close by two weeks. (R. 90-91).

Louis Majel testified that he was married to a woman on the reservation. (R. 93).

Antonio Contreras testified that on the 1st of May, while he was working on the road, and sleeping at Bradford's place that Pablino Lubo, one of the defendants, was also sleeping there. That he had a conversation with Pablino Lubo when no one else was present and that Pablino told him, that if Stanley came up, "We are going to kill him." Contreras' answer in reference to the conversation was as follows: " 'Well, he said, if he comes up here we are going to kill him.' I told him not to think of such a thing like that because Stanley was an honest man, and he would not try to do anything out of the way, because he was ordered from the Government to brand them bulls. So I tried to make him forget what he was saying that he insisted four or five times, he repeated it to me." (R. 94-95).

Fannie B. Stevens, testified that she heard some shots and the Indians yelling. That she saw Ambrosio Apapas pointing a gun at Celso Serrano who was over the fence a little ways off the school grounds. That she saw John

Largo trying to get a gate open, that Pablino and Cervantes Lubo were with him, but she could not recognize the defendants in court. That she asked John what the trouble was and John said they were all fighting, (R. 47-48).

F. P. Wilson, Sheriff of Riverside County, testified that he went on the 2nd day of May, 1912, in the afternoon of that day to Cahuilla. That he did not find Ambroio Aspapas or Francisco Lubo there. That he then returned to Riverside and overtook two teams of Indians going towards Riverside. That he asked the Indians where the Indian was that shot Stanley, and that they said, Apapas was the man. That captain Leonicio Lugo was among them. The Sheriff then took Ambrosio Apapas to Riverside and instructed Leonicio Lugo to take Francisco Lubo to Riverside the next morning, which Leonicio Lugo did. The Sheriff also testified that a revolver was given to him by Leonicio Lugo, one of the defendants, (R. 53).

We have stated the evidence substantially as it was given to the jury and as it was at the time when the defendants moved the court to strike it out in reference to Patrick Casero and all the defendants other than Apapas, for the reason that it did not show a conspiracy and that it did not connect the defendants, other than Apapas, with the death of Mr. Stanley.

This objection that there is no evidence to prove that the defendants, other than Apapas, committed the crime charged, may be considered upon a writ of error, although no motion to direct a verdict in favor of the defendants upon that ground was made, and no exception in the case raises the point.

Clyatt vs. United States, 197 U. S. 207.

We challenge the record to show that there was any evidence connecting anyone of the defendants, other than Apapas, with the death of Mr. Stanley. The evidence shows that there was a quarrel in which two policemen armed by the United States Government took a part, and that the fight that took place was really initiated by these policemen. There isn't a line of evidence that shows that any of the defendants, other than Apapas, aided in the killing of Mr. Stanley. There isn't any evidence that shows that they induced or procured Apapas to kill Mr. Stanley. Then the only theory upon which the evidence introduced was allowed to go to the jury must have been on the grounds that there was a conspiracy to kill Mr. Stanley or do him great bodily harm.

"A conspiracy is said to be a combination of two or more persons by concerted action to accomplish a criminal or unlawful purpose or

some purpose not in itself criminal or unlawful by criminal or unlawful means."

Pettibone vs. United States, 148 U. S. 197.

To hold one criminally responsible for a homicide committed by another, there must have been a conspiracy or concert between them and the deed must have been done in the furtherance of the common object or purpose.

State vs. Finley, 118 N. C. 1161, 24 S. E. 495.

Chapman vs State, 43 Tex. Crim. Rep. 328, 96 Am. St. Rep. 874.

Powers vs. Com. 110 Ky. 386, 53 L. R. A. 245.

It was held in the case of Hyde vs. United States that the union in the unlawful purpose does not alone constitute the crime of conspiracy to defraud the United States. Defined by U. S. Rev. St. sec. 5440 * * *, but that one or more of the parties must do and "act to effect."

Hyde vs. United States, 225 U. S. 347.

We call the court's attention to the fact that the evidence does not show that the defendants indicted had entered into any conspiracy to harm Mr. Stanley. There were more Indians than

those indicted, at the meeting at the school house on May the 2nd, 1912. The evidence of Contreras, heretofore referred to, does not show that these defendants had entered into any conspiracy. Contreras said that Pablino Lubo told him that "We are going to kill him." It was not shown who "we" really were. If "we" applied just to these defendants, then certainly the pronoun has a wider meaning than is generally conceded to it. The evidence does not show that Leonicio Lugo, for instance, did anything at the meeting that would not be done by a respectable and law abiding citizen. He was not mixed up in the policemen's fight. The letters introduced in evidence by the Government do not show that there was any conspiracy to kill Mr. Stanley or to injure him. Evidently the jury realized that the evidence of a conspiracy was flimsy indeed for the reason that out of the ten defendants indicted (Ambrosio Apapas, Charlie Arenas, Patrick Casero, Agaptio Lubo, Cornelio Lubo, Francisco Lubo, Pablino Lubo, Pio Lubo, Cervantes Lubo, and Leonicio Lugo) they convicted six (Ambrosio Apapas, Cornelio Lubo, Francisco Lubo, Pablino Lubo, Pio Lubo and Leonicio Lugo), and only of murder in the second degree.

The court did not seem to think much of the evidence himself. The language of the court

in denying defendant's motion to strike out the evidence of a conspiracy is as follows:

The Court: "I think there is some evidence of a conspiracy. I will permit it to go to the jury, and if there was a conspiracy, there is as much testimony to connect one defendant as another. I agree with council that as to some of the defendants, there is no testimony whatever. It appears that there was a conspiracy either to kill Stanley or to do him some great bodily injury." (R. 145).

6.

THE COURT ERRED IN REFUSING TO GIVE THE FOLLOWING INSTRUCTION REQUESTED BY THE DEFENDANTS.

This instruction is contained in the assignment of error No. 97, Page 261 of record and is as follows: "You are instructed, gentlemen of the jury, that the defendant Cornelio Lubo, was not required by law to report to William H. Stanley on the 2nd day of May, 1912, unless you find from the evidence that he had been summoned by warrant or due process of law to do so and unless you find that he had violated some law, and you must find it from the evidence, he was not required to stay at the school building on the said second day of May, and his leaving con-

stituted no breach of law that justified his detention. And if you find from the evidence that said Cornelio Lubo violated no law on said date, and had not been summoned by warrant as required by law to report to the said William H. Stanley, his leaving the school house was justified and the attempt of the policeman John Largo to bring him back into the school house constituted an assault on the said Cornelio Lubo and he was justified in resisting the attack of said John Largo, and if you find that in the attempt of John Largo, to bring said Cornelio back to the school house the said John Largo dred his pistol and shot at said Cornelio Lubo, the said shooting constituted an assault on said Cornelio Lubo, and the persons present were justified in disarming said John Largo and placing or attempting to place him under arrest."

The only instruction that the court did give on this subject is found on Page 241 of the Record and is as follows: "I will further add here, gentlemen, though somewhat out of order, that if you find from the testimony that the policeman Largo made an assault on the defendant Cornelio Lubo, with a revolver, and attempted to shoot him, the defendant Lubo had a legal right to resist the attack and the other defendants present had a like right to sieze upon and disarm the assailant, using such force as was deemen reasonably necessary for that purpose.

Of coure whether the policeman Largo made a felonious assault on this defendant as claimed by the defense, or whether he was siezed upon, assaulted and disarmed, as claimed by the Government, is a question of fact for your consideration."

It will readily be seen that the instruction thus given the jury to the effect that if the policeman, John Largo, made an assault on the defendant Cornelio Lubo with a revolver, and attempted to shoot him, the defendant Lubo had a legal right to resist the attack and the other defendants present had a like right to sieze and disarm the assailant, using such force as was deemed reasonably necessary for that purpose, was not full enough nor did it cover all the facts of the case.

It does not define nor state what an assault is. It does not state that if the defendant Lubo had committed no crime, it was an assault by the policeman, Largo, to arrest or attempt to arrest him. Neither does it state that the defendant Lubo and the other defendants had a right to resist an arrest or an attempted arrest by the policeman, Largo, of said defendant Lubo, if the defendant Lubo had committed no crime and the said policeman had no warrant of arrest for said Lubo.

The testimony of the witness for the prose-

cution, to-wit: Celso Serrano, beginning at 110 record, and the part covered by the proposed instruction which was refused (page 113 record), that a meeting was being held at the school house between Mr. Stanley, the Indian Agent at this Reservation, and the Indians of the Reservation. That Cornelio Lubo after taking some part in this meeting got up and left. That Mr. Stanley told him to come back, but that Lubo paid no attention to Mr. Stanley's command, and that Mr. Stanley sent policeman John Largo to bring Lubo back to the meeting. That policeman Largo attempted to bring Lubo back, but that Lubo refused to come back and that the policeman so informed Stanley. That then Stanley again informed policeman Largo to go and bring Lubo back. When John Largo went the second time to get Lubo an altercation took place and John Largo was over-powered by Lubo and some other Indians.

Undoubtedly Cornelio Lubo had the absolute right to go away from the meeting whether Stanley wanted him to or not, and he also had the right to refuse to go back with the policeman, and to resist any force used by the policeman or any arrest attempted to be made by the policeman.

Therefore we maintain that the instruction above set out and which was refused by the court should have been given, and that it was a

reversible error for the court not to have given it. The instruction which was given only contemplates or covers an assault with a revolver and also an attempt to shoot the defendant Lubo, but does not contemplate or cover the simple assault which would be created by the arrest or attempted arrest of Lubo without a display of arms, when the defendant Lubo had committed no crime or was not subject to arrest.

7.

THE COURT ERRED IN ALLOWING PLAINTIFF'S EXHIBITS 7 AND 7A, 8, 9 AND 9A.

In reference to these letters, we respectfully contend that they were too remote to be part of the res gestae. That the letters of the Second Assistant Commissioner, C. F. Hauke, were, as fas as the Government was concerned in this proceeding against the defendant, self serving declarations. The letter of Leonicio Lugo to the Honorable R. G. Valentine, (R. 64-65-66-67), contains nothing upon which an indictment for a conspiracy could be predicated. The defendant, Leonicio Lugo, enclosed an affidavit in his letter to the Commissioner of Indian Affairs at Washington, but it will be observed that this affidavit was signed by Indians of Soboba Res-

ervation and not by any of the Cahuilla. The introduction of this affidavit in evidence made Leonicio Lugo, the defendant, answerable for statements in the affidavit sworn to by parties who are not involved in this prosecution.

The admission of the testimony of Mrs. Adda A. Light, and Arnold Archibald Stanley, we insist was too remote to prove any conspiracy to kill or injure Mr. Stanley in 1912, or to show that Leonicio Lugo for instance, or Cornelio Lubo intended to kill Mr. Stanley or to do him any harm whatever. These statements by Francisco Lubo were made on the 20th of November, 1907. Mr. Stanley was killed on the 2nd of May, 1912, but he was not killed by Francisco Lubo. Mr. Stanley at that time was not superintendent of the Cahuilla Reservation. He was appointed in the latter part of 1911, (R. 61).

The evidence does not show that there was any understanding between Francisco Lubo and Ambrosio Apapas to kill or injure Mr. Stanley. The evidence does not show that Francisco Lubo, in the fight that took place at Cahuilla on the 2nd day of May, opposed or fought or did anything to injure Mr. Stanley.

CONCLUSION

The plaintiffs in error insist that the trial court had no jurisdiction to try them for the

offense for the reasons set forth in the Assignment of Errors No. 1, of this brief. However, even though the trial court had jurisdiction to try the case, errors were committed in the course of the trial, to which the attention of the court has been heretofore directed, and which, in our opinion, render a reversal of the judgment, necessary in order that justice may be done to the plaintiffs in error.

In reviewing the evidence in this case, the suggestion is forced upon us that William H. Stanley having been an officer of this great and powerful government and meeting his death in a violent manner, were facts by which the jury were unconsciously prejudiced against the plaintiffs in error (defendants). And the further fact that some of the members of the jury had friendly intercourse with one of the witnesses for the government, Francis Swayne, and that an article in one of the powerful dailies of California was read by the jurors before they arrived at a verdict, which article in our judgment was intended to create a sentiment unfavorable to the defendants cast in addition, an influence prejudicial to the defendants upon the minds of the jurors, who were of a different race and who possibly inherited a natural antipathy to the Indian.

For all of these reasons we think the plaintiffs

in error did not have a fair trial, and it is respectfully submitted that the judgment of conviction should be reversed and the plaintiffs in error granted a new trial.

THEODORE MARTIN and
MIGUEL ESTUDILLO,
Attorneys for Plaintiffs in Error.

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In the Supreme Court of the United States.

OCTOBER TERM, 1913.

AMBROSIO APAPAS, CORNELIO LUBO, FRANCISCO LUBO, PABLINO LUBO, PIO LUBO, and LEONICIO LUGO, plaintiffs in error,
v.
THE UNITED STATES.
No. 746.

IN ERROR TO THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF CALIFORNIA.

BRIEF FOR THE UNITED STATES.

STATEMENT.

Plaintiffs in error (hereinafter called defendants) were convicted of murder in the second degree (Rec. 30), and sentenced to 10 years' imprisonment each.

Defendants are Mission Indians, members of the Cahuilla Tribe, and resided on the Cahuilla Indian Reservation in southern California (R. 60). Stanley, their victim, was a white man and was superintendent of the reservation. On May 2, 1912, he was shot by Apapas, and died the same day. The other defendants were principals in the second degree, the claim of the Government being that the homicide was the result of a conspiracy among the Indians.

The offense occurred on the Indian reservation, and jurisdiction was taken by the United States

court under section 328,[1] Penal Code of March 4, 1909 (35 Stat., 1151). See also sections 273, 275, 330, and 332 (R. 237). The case is not reported below.

The case is brought to this court on the claim that the identification of the pistol by Apapas was received in evidence in violation of his rights under the fifth amendment.

Inasmuch as this statement was received only against Apapas, it can not avail the other defendants, and apparently they have no right in this court.

Defendants also questioned the jurisdiction of the trial court, but that point is not certified, so that it does not give jurisdiction here.

Defendants raise numerous points on questions of evidence, instructions to the jury, etc. They will be stated hereafter.

Ten Indians were indicted. Six were convicted—Apapas, Cornelio Lubo, Francisco Lubo, Pablino Lubo, Pio Lubo, and Leonicio Lugo. Those acquitted were Charlie Arenas, Patrick Casero, Agapito Lubo, and Santos Lubo.

The Cahuilla Reservation was established by Executive order of December 27, 1875 (1 Kappler's Laws and Treaties, p. 820).

The tribal form of government is still maintained (R. 146–154). The Indians have a captain and a tribal judge elected by themselves, but appointed by the Indian Office (69).

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[1]Appendix.

Prior to July 1, 1911, the reservation was in charge of Swayne. On that day it was placed in charge of Stanley, then also superintendent of the Soboba Reservation, some 40 miles north (59).

In July, 1910, Lugo had received a commission as captain of the tribe from Superintendent Swayne, but the commission was revoked the same year (61).

Friction followed between Swayne and the Indians and evidently resulted in Swayne's transfer, though Lugo was told in a letter from Assistant Commissioner Hauke (Oct. 6, 1911, R. 61) that he should not understand that the transfer was because of Lugo's complaints.

The Indians apparently concluded not to accept Stanley as superintendent, but to secure his transfer as well. In the letter last mentioned Lugo was told that Mr. Stanley had expressed the belief that the Indians would be ready to work in unison with him as soon as they understood his duties, and Lugo was advised that the Indians should follow Stanley's directions and work together with him. This letter was transmitted to Lugo in one from Stanley expressing a feeling of good will and asking the Indians to get together and help him to "do things" (62).

On October 25, 1911, Lugo wrote the commissioner of Indian Affairs protesting against Stanley's appointment, complaining that he was arbitrary, tyrannical, violent in temper, and imprisoned an Indian upon the slightest provocation. The letter was supported by affidavits from Indians on the Soboba Reservation. Lugo stated that the Indians asked

only to be allowed to elect their own captains and judges, and to remain on their own land (64).

February 20, 1912, the Commissioner replied that the right of appointing Indian judges and policemen is vested in the Indian Office; that the superintendent was expected to see that only proper persons served as captains, and was justified in withholding a commission from any Indian elected who did not have the proper qualifications. The letter stated that Lugo had been discontented under the former superintendent, and appeared to be no better satisfied now, and admonished him to cease his efforts to create dissatisfaction and unrest among the Indians and to obey the superintendent (68).

Pending the exchange of these letters, Stanley made several visits to Cahuilla, and endeavored to meet the Indians in council, but they refused to meet him, stating that Leonicio Lugo was their captain and would not let them come (Mrs. Stanley, 80, 81). On Stanley's first visit, Lugo said that the Indians would not talk to Stanley until they had received a letter from Washington in answer to one they had written (Adolf Lugo, 122)—evidently referring to Lugo's letter of October 25, 1911.

During the short term of his service, Stanley made perhaps a dozen visits from Soboba to Cahuilla (80), and was always patient and courteous with the Indians (Mrs. Stanley, 76; Stevens, 130).

Some time during the summer of 1911 Patrick Casero (who was acquitted) stated that the Indians did not want Stanley as their superintendent; that

they would not recognize him and would get rid of him just as soon as they did the previous agent (Chambers, 121).

Defendant Francisco Lubo, in 1907 and again in 1908, had visited Stanley's house on the Soboba Reservation and threatened to kill him. After the second visit Francisco was banished from that reservation. He never afterwards spoke to Stanley (Mrs. Stanley, 71–74, 78; Adda A. Light, 81; Arnold Stanley, 82).

It was understood among the Indians that Stanley, whose headquarters were at the Soboba Reservation, was coming to Cahuilla about the 1st of May for the purpose of branding some bulls left with the Indians by a former superintendent. Though the animals belonged to the Government, the Indians had come to regard them as their own and objected to the branding, fearing that it might mean the taking away from them of the calves.

The theory of the prosecution was that the Indians had determined to compel the recognition of Lugo as their captain, and to prevent the branding of the animals, and that in order to accomplish these things they had conspired to drive Stanley away as superintendent or to inflict great bodily harm on him, or death, if necessary; and that the killing of Stanley was the natural result of this conspiracy.

On May 1, 1912, Stanley, accompanied by Pederson, a white farmer, and Celso Serrano, an Indian forest guard, came from Soboba to Cahuilla, arriving about 4 o'clock (110).

Several miles before reaching Cahuilla, they stopped to talk with some men who were repairing the road. Defendant Pablino Lubo was among the workmen. Contreras, another workman, testified that Pablino had said during the morning he understood Stanley was coming to brand the calves and colts and bulls and "If he comes up, we are going to kill him." After Stanley had gone by, the witness said, "Pablino was gone, just as soon as he seen Stanley pass" (94).

The day was a fiesta with the Indians which they celebrated as a decoration day. The afternoon was spent at the cemetery, and in the evening there was a supper and dance at Juan Costa's house, the dance lasting all night. They danced the old-time war dance (100).

Stanley wanted to see two of the Indians, Cornelio Lubo and Adolph Lugo. He sent word to them to this effect by John Largo, the Indian policeman, and the message was delivered at the dance. The Indians were told that Stanley desired to see them at 9 o'clock the next morning (100, 123).

That same evening Stanley and Largo talked with defendant Pablino Lubo at the latter's house. Pablino claimed that some money was due him from the Government, and called Stanley a liar when the latter said he had no such money for Pablino, but would write to Washington about it (Largo, 234, 235).

Leonicio Lugo was still treated by the Indians as their captain, and was their active leader.

He was present at the dance, as were all the defendants, with the possible exception of Apapas (100).

Cornelio Lubo early the next morning told Leonicio Lugo of his summons from Stanley. Lugo arranged to go with Lubo and asked Ignacio and Juan Costa to go also.

That morning about 28 of the Indians, including most of the defendants, were gathered around Juan Costa's barn (101), and all were present in the school room during the council immediately preceding the killing.

Leonicio Lugo was at the head of the Indians and conducted the negotiations on their part. The band first called at Stevens's house; Lugo asked to see Stanley. They all adjourned to the schoolhouse, and there Lugo appointed the interpreter for the Indians, and was their active manager.

Lugo first brought up the question of his leadership by demanding to know why Stanley wanted to see Cornelio Lubo, and when Stanley refused to recognize him in the matter reasserted his captaincy and said Stanley could talk to Lubo only through him. Lugo then brought up the question of branding the cattle, and called upon the different Indians interested in the matter to express their views. When this also was decided against the Indians, and after Stanley had spoken about some other matters, Lugo closed the meeting and ordered the Indians to go. His order to Cornelio Lubo (225) was in direct defiance of Stanley.

Arguments having failed with Stanley, force was the only way left to the Indians to accomplish their purpose.

The details of the killing are told by five Government witnesses, three of them Indians—Largo, the policeman; Serrano, the forest guard; and Adolf Lugo, a nephew of defendant Leonicio Lugo (129). The white men were Stevens, the teacher, and Pederson, the farmer.

Among the buildings at the reservation were the teacher's house and the schoolhouse. Stevens occupied the former, and Stanley spent the night with him. About 9 o'clock the next morning the Indians called at the teacher's house to see Stanley and they all adjourned to the schoolhouse. Stanley and the two white men and Serrano were present throughout; Largo and Adolf Lugo came in after the meeting had begun.

Leonicio Lugo was the spokesman for the Indians, and their interpreter was Ignacio Costa (101).

The versions of the Government witnesses—that of the Indians who heard the discussion in the Indian tongue, and that of the white men who heard the discussion in their own language—is in substance the same, except that the Indians tell several important statements made in their own language which were not translated.

The interview was opened by a demand from Leonicio Lugo to know what Stanley wanted with Cornelio Lubo; Stanley replied that he could not recognize Leonicio, but would himself talk with

Cornelio. Leonicio replied that he was the captain and leader of the people there, and if anybody wanted any business with his people they would have it through him. (Serrano, 111, 112; Stevens, 131; Pederson, 138; L. Lugo, 223.)

There followed a long talk about branding the bulls and the ownership of the colts and calves, the appointment of Serrano as policeman, rules relating to fences, and other matters.

The Indians said they understood Stanley was coming to brand the Government bulls. He replied that was correct. The Government witnesses agreed that the Indians replied that if Stanley did brand the bulls he would have to take them off the reservation, and Stanley replied he could not do that without directions from Washington. (Largo, 102; Serrano, 112; Lugo, 123; Stevens, 132; Pederson, 138.)

During the conversation Charlie Arenas and Agapito Lubo (who were acquitted) said something to the interpreter about taking him outside, and Pio Lubo (who was convicted) said, "If you fellows are afraid of Mr. Stanley, I will drive him out by the hair." (Largo, 103.)

Pio said, "You fellows are talking too much and going too far. *You must do what you said this morning.* Let us drag him out by the hair. I will do it myself." (Serrano, 112; Adolf Lugo, 124.)

Apapas, who was present (112), displaye' such an antagonistic attitude toward Stanley that it attracted Pederson's attention (143).

These remarks were not interpreted to the whites. Finally Leonicio, who had conducted the greater part of the conversation, called upon various ones who desired to speak, and then said let us go out (A. Lugo, 124). Defendant Leonicio Lugo himself testified that he told Cornelio Lubo to go out (225).

Thereupon, as Cornelio Lubo started out Stanley said—"Come here, I want to see you and talk to you." Cornelio simply turned his head back and went on; Stanley sent the policeman, Largo, after him. Largo got to Cornelio before the latter passed out, but Cornelio pushed him back against the door and went on. Stanley then sent Largo out after Cornelio. (Largo, 104, 105; Serrano, 113; Lugo, 124; Stevens, 132; Pederson, 139.)

Largo caught up to Cornelio, took him by the shoulder, and stated that Mr. Stanley wanted him to come back; Cornelio kicked back at Largo, and several of the other defendants caught hold of him. Francisco undertook to draw Largo's gun, and they both struggled for it. Cornelio, Pablino, Pio, Francisco, and others overpowered Largo and threw him to the ground and took the pistol away from him (Largo, 105).

Serrano had started out to assist Largo, but when he got out on the porch saw the latter's predicament. Thereupon Apapas pulled out his gun and pointed it at Serrano; the latter pulled his own and told Apapas to put his up. The two men exchanged shots, Serrano shooting either at the ground or in the air. When Apapas had emptied his own revolver, Fran-

cisco handed him another—evidently that taken from Largo—and Apapas continued to shoot at Serrano. Serrano was hit just below the heart and walked back toward the fence and ran away. (Serrano, 113, 115; Lugo, 124; Stevens, 132.) In the meantime Stanley and Stevens had come out on the porch. Stanley told Serrano not to shoot, but to come into the house (114).

After Ambrosio shot Serrano, he turned and came toward the porch where the white men were standing and shot Stanley. Stanley raised his hand and called to Apapas not to shoot, turned around, and the bullet entered his back. Apapas followed Stanley in the schoolroom and shot again either at Stanley or at Stevens and Pederson, who had run back into the schoolroom. (Lugo, 124, 125; Stevens, 132, 133.) Apapas continued through the schoolhouse, going out the rear door.

The second bullet went through Pederson's coat and was found on the floor; it hit the wall about 3 feet above the floor. (Pederson, 140, 142.)

All the defendants testified, and denied many statements of the Government's witnesses. In brief, their contention was that there was no conspiracy among them to kill or injure Stanley; that after Cornelio Lubo left the schoolroom, Largo followed and fired twice at him, whereupon Apapas took the pistol from him; that at this point Serrano came out and opened fire on Apapas, who fired one shot in return; that Stanley had been hit accidentally by one of the shots.

Apapas, in his own testimony, said nothing about the shooting, but contented himself with denying that he was present at the dance the night before, or owned a revolver (230).

After the affair was over a number of the Indians, including Francisco Lubo, started for Riverside. Leonicio Lugo said he was going to surrender Apapas for shooting Serrano, though he admitted that Serrano had not returned to the reservation, and he did not know whether he was hurt or not (228).

On the way they were met by the sheriff, who took Apapas from them. The Indians continued to Riverside, and there Lugo obtained from a justice of the peace a warrant charging Largo and Serrano with assault with a dangerous weapon (229, 230.)

The Government contends from these facts—

I. That the trial court had jurisdiction; that the question is not certified, and hence can not be used to give jurisdiction here.

II. The receipt of Apapas's identification of the pistol did not involve the application of the Constitution; the evidence was properly admitted.

III. In any event, the court has no jurisdiction as to the defendants other than Apapas.

IV. The rulings of the court below on questions of evidence, instructions to the jury, etc., were correct.

(*a*) The letters between the Indian Office and Leonicio Lugo were admissible.

(*b*) There was sufficient evidence of the guilt of the other defendants to justify leaving that question to the jury.

(*c*) The charge was correct.

(*d*) The refusal to grant a new trial can not be reviewed here.

(*e*) The district attorney was not guilty of misconduct.

ARGUMENT.

JURISDICTIONAL QUESTIONS.

Jurisdiction here can be claimed, if at all, only on the ground that the trial court lacked jurisdiction, or that the application of the Constitution is involved. (Sec. 238, Judicial Code.)

I.

That the trial court had jurisdiction is settled by prior decisions here; the question is not certified and can not be used as the basis of jurisdiction.

A. *The question is not certified.*

This clause of section 238 reads:

> In any case in which the jurisdiction of the court is in issue, in which case the question of jurisdiction alone shall be certified to the Supreme Court from the court below for decision.

In *Chappell* v. *United States*, 160 U. S., 499, 507, the court said of this clause:

> In order to bring a case within the first class, not only must it appear of record that a question of jurisdiction was involved in the decision below, but that question, and that alone, must be certified to this court. If both a question of jurisdiction and other questions

> were before the court below, and a writ of error is allowed in the usual and general form to review its judgment, without certifying or specifying the question of jurisdiction, this court can not take jurisdiction under this clause of the statute.

The present writ of error is in the usual and general form (1), and does not certify or specify the question of jurisdiction. From the petition for the writ (25) and assignment of errors (251), it appears that defendants seek to review some 100 errors alleged to have been committed during the trial.

B. *The defendants were tribal Indians, and within the jurisdiction of the Federal courts.*

The contrary is argued on the ground that, by virtue of the treaty of Guadalupe-Hidalgo, by which California was acquired from Mexico, the defendants or their ancestors became citizens of the United States, and upon the admission of California to statehood became citizens of that State, and hence beyond the jurisdiction of the United States.

These arguments are immaterial.

1. The precise question was decided in *United States* v. *Sandoval*, 231 U. S. 39. That was a prosecution for introducing liquor into an Indian pueblo in New Mexico. It was there argued that the defendant was a citizen and hence beyond the jurisdiction of the United States. After stating that it was an open question whether the Indians had become citizens of the United States (39), the court held that the question was immaterial (48), "because citizenship is not in itself an obstacle to the exercise by Congress of its

power to enact laws for the benefit and protection of tribal Indians as a dependent people. (*Cherokee Nation* v. *Hitchcock*, 187 U. S. 294, 308; *United States* v. *Rickert*, 188 U. S. 432, 445; *United States* v. *Celestine*, 215 U. S. 278, 290; *Hallowell* v. *United States*, 221 U. S. 317.)"

2. The defendants are still a dependent people.

The Cahuillas are Mission Indians. Their reservation was created in 1875. (1 Kappler, 820.)

The testimony of the Indians themselves shows that since the treaty of Guadalupe-Hidalgo, the tribal organization has continued and now exists (Rec. 146 to 154).

They have been treated by the Government as requiring special consideration and protection, like other Indian communities. Agents and superintendents have been provided, and schools established. See act of May 17, 1882 (22 Stat., 84), and subsequent Indian appropriation acts. By the act of January 12, 1891 (26 Stat., 712), a commission was established to provide for the relief of the Mission Indians, and special counsel were employed to defend their rights.

No allotments of land have been made to them. (Rep. 1912, Com. of Indian Affairs, 87, under head of Soboba.)

Under these facts, the determination of Congress to continue its guardianship over these Indians is conclusive.

United States v. *Pelice*, [illegible] U. S., 442, 445
United States v. *Sandoval*, 231 U. S., at 46,

quoting from *Tiger* v. *Western Investment Co.*, 221 U. S., 286, 315.

3. The statute takes jurisdiction because of the *place* in which the offense is committed—"within the limits of an Indian reservation in any State." (Sec. 328 Penal Code.)

Sections of the Revised Statutes taking jurisdiction of white citizens for murder of an Indian committed on an Indian reservation were sustained in *Donnelly* v. *United States* (228 U. S., 270), over an objection similar to that here. The principle is the same. (See also *United States* v. *Pelican*, *supra*.)

Kagama v. *United States* (118 U. S., 375), in which the validity of the present statute was sustained, arose in California. There was no suggestion that citizenship of Indians deprived the Federal courts of jurisdiction.

4. The question having been put at rest by prior decisions of this court, could not, even had it been properly certified, serve as the foundation for the present writ.

Rakes v. *United States*, 212 U. S., 55; *Kaufman* v. *Smith*, 216 U. S., 610.

II.

The receipt in evidence of Apapas's statement that he had seen the gun with which the shooting was done does not involve the application of the Constitution, nor was it error.

Defendants' claim now is that the identification occurred while Apapas was under arrest, and therefore it was involuntary.

The Government contends not only that the statement was voluntary, but that the objection as made in the trial court does not raise the constitutional objection.

Three witnesses testified on this point—Wilson, the sheriff (53); Nelson, his deputy (57); and Durlin, deputy marshal (98).

May 2 the sheriff went to the reservation, but not finding Apapas, started back to Riverside and met two teams of Indians. He asked if they came from Riverside and where the Indian was that shot Stanley. Leonicio Lugo pointed out Apapas, whom the sheriff took to Riverside and locked up (53).

Next morning Leonicio Lugo brought a gun to the sheriff as the one Apapas shot Stanley with. This statement was not offered against Apapas (54).

On May 6, in the sheriff's office, in the presence of the latter, Nelson, Durlin, Leonicio Lugo, and Gabe Costa, an interpreter, the gun was shown to Apapas. The conversation took place through Costa (54). Wilson testified that Durlin gave the gun to Costa to ask if it was the gun he shot Stanley with, that no one offered Apapas any promises or immunity for talking; that there was no prior conversation with Apapas, that no gestures were used toward him, that Apapas was standing free and alone and unshackled in the room, and that Apapas answered the question in the affirmative (54, 55). It was objected that the interpreter should be called to testify to show what inducements had been held out. The

district attorney said he would not call Costa because the latter was then appearing in court as the interpreter for the defendants, but if they wished to call Costa, he would withdraw the present witness. The court held the sheriff might testify without the interpreter being called, and witness was turned over for cross-examination. Some unreported discussion ensued, but the defense apparently did not cross-examine on this point (55). Witness then said that Apapas bowed his head in answer to the interpreter's question (55, 56).

Deputy Nelson testified that Apapas, through the interpreter Costa, answered yes to Durlin's question. This was objected to as the statement of the interpreter, and therefore hearsay (58).

The next day the court concluded that the objection because of hearsay was good, and directed the jury to disregard the testimony of the officers as to conversations had with the defendants through an interpreter (59).

Later in the trial Deputy Marshal Durlin, testifying about the same conversation, said the gun was shown to Apapas and witness asked if he ever saw that gun before (98).

Objection was made "that no proper foundation was laid for a confession as there is no evidence to show that there was any were not inducement to immunity offered." Objection was overruled, and witness continued that Apapas answered "Si," which is the Spanish for yes, and made a motion toward the gun (98, 99).

It is the last testimony which the defendant now relies upon as raising a question involving the application of the fifth amendment of the Constitution.

A. *This objection does not involve the construction or application of the Constitution.*

It is admitted by the Government that an involuntary confession is inadmissible, and there is no dispute as to what is an involuntary confession. But Apapas did not assert that his statement was involuntary and therefore inadmissible. He merely objected that the Government at the time of its offer had not shown that his statement was voluntary.

The objection therefore involves only a question of evidence—the burden of proof. There are many different rulings upon this point. In a few jurisdictions it is held that a confession is *prima facie* admissible, and it is incumbent upon the defendant to show that improper inducement existed. *Commonwealth* v. *Sego*, 125 Mass., 213; *Rufer* v. *State*, 25 Ohio St., 464, 469. Prof. Wigmore says this is the practical and natural rule. 1 Wigmore, Evidence, sec. 860. But in most American jurisdictions the rule is that the prosecution in offering the confession must show that it was voluntary (ibid).

There are several variations of these rules. It is sometimes held that the prosecution must show an absence of inducement, not only from the person to whom the confession was made, but from all other persons. In other cases, the confession is received unless attacked by evidence of improper inducement, in which event the burden of showing it to be voiun-

tary in character devolves upon the prosecution (ibid).

None of these rules affects the application of the Constitution. That instrument protects the defendant from the receipt of an involuntary confession, but when its protection is recognized, the Constitution is not concerned with the method of proving the voluntary character of the confession.

An analogous principle was applied in *Taylor* v. *Taft*, 203 U. S., 461. Jurisdiction was asserted under a clause of the statute authorizing a review in any case in which is drawn in question "the validity of an authority exercised under the United States."

Taylor, who had been removed from a clerkship in the War Department, brought mandamus to compel her reinstatement, claiming that the Civil Service rules had been violated in her dismissal. She did not question the authority of the Secretary of War to remove her if certain required formalities had been complied with, but claimed that her dismissal was illegal, because the civil-service rules had not been observed. It was held that this did not draw in question the validity of the authority exercised under the United States, but merely the construction and application of regulations of the exercise of such authority (464).

So, in the present case, the constitutional right of defendant is admitted and his objection merely asserts that the proper rule of evidence was not applied.

B. *The statement of Apapas was properly received in evidence.*

The evidence clearly showed that the statement was voluntary. As the testimony was finally admitted to the jury, Apapas was merely asked if he had seen the gun before and said yes (98). Nothing was said or done to him which could possibly be construed into a threat or promise. This affirmatively appeared from the testimony of the Government witnesses, and was not disputed by the defense. Leonicio Lugo, who was present, and Apapas himself, both testified; they contradicted the Government's witnesses in other respects, but had not a word to say on this. Moreover, Gabe Costa, the interpreter, was present throughout the trial, but was not called as a witness. Unquestionably, therefore, the testimony of the Government's witnesses was unimpeachable.

It is true that Apapas was in custody when he made the statement. This is the reason now given for arguing that it was involuntary. While this fact is one which will be considered, the law is settled that it is not enough in itself to render a confession involuntary. In *Sparf and Hansen* v. *United States*, 156 U. S. 51, 55, it is said:

> Counsel for the accused insist that there can not be a voluntary statement, a free open confession, while a defendant is confined and in irons under an accusation of having committed a capital offense. We have not been referred to any authority in support of that position. It is true that the fact of a prisoner being in custody at the time he makes a confession is a circumstance not to be overlooked, because it bears upon the inquiry whether the

> confession was voluntarily made or was extorted by threats or violence or made under the influence of fear. But confinement or imprisonment is not in itself sufficient to justify the exclusion of a confession, if it appears to have been voluntary and was not obtained by putting the prisoner in fear or by promises.

To the same effect are *Pierce* v. *United States*, 160 U. S. 355, 357; *Wilson* v. *United States*, 162 U. S. 613, 623; *Bram* v. *United States*, 168 U. S. 532; *Commonwealth* v. *Bond*, 170 Mass. 41; *Commonwealth* v. *Williams*, 171 Mass. 464; *Commonwealth* v. *Devaney*, 181 Mass. 34; *State* v. *Gorham*, 67 Vt. 367; *Roesel* v. *State*, 62 N. J. Law, 216.

Such is the law of California where the present case arose. *People* v. *Ramirez*, 56 Calif. 536.

The cases are collected in 1 Wigmore, Evidence, sec. 851, and in an elaborate note in 18 L. R. A. 796.

Nor does the failure to caution Apapas of his right to refuse to talk render his answer involuntary (1 Ruling Case Law, 569; 18 L. R. A., N. S., 791, cases cited).

Both the arrest and failure to caution are facts which were considered by the trial court. There was ample affirmative evidence showing the voluntary character of the confession, and his judgment will not be interfered with.

The statement was of such slight importance as to hardly justify the name of confession. It was a mere admission that Apapas had seen the pistol before. The fact that Apapas did the shooting, and with that pistol was not denied. Afterwards at least

two defendants identified the pistol as the one taken from Apapas and with which the shooting was done. (Arenas, 207; Cornelio Lubo, 182.)

C. *The question, having been set at rest by prior decisions of this court, does not give jurisdiction.*

Rakes v. *United States* and *Kaufman* v. *Smith*, supra.

III.

Jurisdiction can not be taken as to the defendants other than Apapas on the ground that the application of the Constitution is involved.

Apapas' statement as to the pistol was received only as against him. It is true that this was not mentioned when Durlin testified (99), but the court had previously cautioned the jury with reference to this specific statement (58). And the record is full of similar cautions by the court.

But even if the statement was considered as evidence against them, their constitutional rights were not involved—no one of them was thereby compelled to testify against himself.

It follows that the court is without jurisdiction as to them.

While the specific point does not seem to have been decided, the principle of decisions in civil cases would seem to dispose of it.

Where jurisdiction is asserted on the ground of the amount involved, it is held that appellants having separate claims can not add them to make the jurisdictional amount.

In *Davis* v. *Schwartz*, 155 U. S., at 647, the rule is hus stated:

> The rulings of this court are uniform and consistent to the effect that, where several plaintiffs claim under the same title, and the determination of the cause necessarily involves the validity of that title, this court has jurisdiction, though the individual claims do none of them exceed the requisite amount, but when the matters in dispute are separate and distinct, and are joined in one suit for convenience or economy, the case will be dismissed as to claims not exceeding $5,000.

While the defendants here were jointly indicted and charged with a joint offense, the conviction and sentence as to each was in legal effect separate and distinct; each was concerned only with his own judgment.

If the ruling of the court involved all, it might furnish a joint ground for review. But the evidence relied on to give jurisdiction was received against one only, and invaded only his constitutional rights. It therefore furnishes no ground of jurisdiction as to the others. It is separate—as though the defendants had received separate trials.

IV.

If this court has jurisdiction, there are certain rulings below on the evidence, instructions and on the motion for a new trial which may be briefly disposed of.

A. *The letters between the Commissioner of Indian Affairs and Superintendent Stanley, on the one hand, and Leonicio Lugo on the other, were properly received.*

These letters were five in number (61 to 70).

The first was from Assistant Commissioner Hauke to Lugo, advising him of Stanley's appointment, and expressing the hope that the Indians would work together with Stanley. It was transmitted to Lugo in a letter of the same character from Stanley (62).

The result of these was a vigorous protest from Lugo to the Commissioner of Indian Affairs against Stanley's appointment. Stanley was accused of being arbitrary and tyrannical in his treatment of the Indians, and affidavits of specific charges were sent with the letter. The letter also stated that the Indians wanted to elect their own captains and judges (64).

This letter was dated October 25, 1911. It will be remembered that the Indians refused to recognize Stanley pending the receipt of an answer (130).

Finally, the answer came. It was dated February 20, 1912, and was an admonition to Lugo to cease his complaints and work with Stanley. He was also told that the right to appoint the captains and judges was in the Indian Office, and that they must be satisfactory to the superintendent (68).

The visit of Stanley in May was apparently his next visit after the receipt of this letter.

The entire correspondence was highly important as showing the relations of Lugo toward Stanley, and was received for that purpose, and as against Lugo only (68, 70). The jury was expressly cautioned that the letters were not evidence of the truth of any statements made in them (71).

The evidence was clearly admissible in the discretion of the court. The theory was that the defendants had determined to get rid of Stanley as superintendent. These letters showed an attempt to do that by Lugo; that the Indian Office would probably listen to no further complaints by Lugo, and any relief would have to come from his own acts. It also showed the real reason for Lugo's complaint—his desire to remain as captain.

B. *There was sufficient evidence of the guilt of the defendants other than Apapas.*

The defendants moved to strike out all the evidence relating to the other defendants on the ground that a conspiracy had not been shown, and the motion was denied (145).

The motion is now presented as if it were one to direct a verdict for those defendants.

These defendants were charged as principals in the second degree. The theory of the Government was that they had agreed to get rid of Stanley, and to kill if necessary.

The evidence detailed above supports the verdict.

To briefly recapitulate as to the defendants who were convicted:

Leonicio Lugo for years had been the leader of the Indians. The revocation of his commission as captain had caused the friction resulting in the former superintendent's removal. He had attempted to secure Stanley's removal also, but had failed; and all hope of relief from the Indian Office was gone. But Lugo had recently been reelected by his tribe (162)

and intended that his authority should be admitted. There was otherwise no occasion for him to interfere with Stanley's desire to see Cornelio Lubo. But to his mind that was a good opportunity to force the issue, and let Stanley see he could do nothing as superintendent except through Lugo. Lugo's control over the Indians during the day was complete. He led the band to the teacher's house and to the schoolhouse, opened the council, conducted it throughout, and terminated the meeting by directing Cornelio Lubo to leave, in defiance of Stanley's orders.

His attempts to secure recognition otherwise having failed, no course but violence was left. And when that violence did occur, the jury were justified in finding him party to it.

Pablino Lubo the day before had said they were going to kill Stanley if he tried to brand the cattle, and had a grievance because of money claimed to be due him (94, 234).

Pio Lubo at the hearing in the schoolhouse accused the others of faint-heartedness, insisted that their plan be executed, and himself wanted to drag Stanley out by the hair (103, 112, 124).

Francisco Lubo had threatened to kill Stanley years before, and would not speak to him. He took from Largo and handed to Apapas the pistol with which the latter killed Stanley (71–4, 8; 105, 114).

Cornelio had acted throughout under Lugo's instructions. At the latter's bidding he refused to remain to talk to Stanley, and forcibly opposed the attempt of the policeman Largo to get him to return.

He and all the other defendants except Lugo had united in overpowering the policeman Largo and in taking his pistol from him.

Apapas had assisted in overpowering Largo, and taking his pistol, had severely wounded Serrano, who had attempted to come to Largo's assistance, and then had wantonly shot Stanley and even followed him into the schoolhouse, where he fired a second time.

Clearly the jury were justified in believing that the six Indians who were convicted were responsible for the killing, and had seized the attempt of Largo to detain Cornelio Lugo as a mere pretext to carry out their design.

C. *The court gave in its charge the substance of the rejected prayer of the defendants.*

This clearly appears from a reading of the rejected instruction (261) and the charge, where the court said:

> I will further add here, gentlemen, though somewhat out of order, that if you find from the testimony that the policeman Largo made an assault on the defendant Cornelio Lubo with a revolver, and attempted to shoot him, the defendant Lubo had a legal right to resist the attack and the other defendants present had a like right to seize upon and disarm the assailant, using such force as was deemed reasonably necessary for that purpose. Of course, whether the policeman Largo made a felonious assault on this defendant, as claimed by the defense, or whether he was *seized* upon, assaulted and disarmed, as claimed

by the Government, is a question of fact for your consideration (241).

D. *The refusal to grant a new trial can not be reviewed here.*

It was stipulated, upon the motion for a new trial, that while the jury were considering their verdict a copy of the Los Angeles Times, containing an article entitled "The fate of Cahuilla Bucks in doubt over night," was in the jury room and read by several jurors; also that during the trial several of the jurors talked to one Swayne about a matter entirely unconnected with the case (247, 248). The trial court considered the evidence and denied the motion for a new trial.

1. The matter was in the discretion of the lower court and that discretion can not be reviewed here. (*Holmgren* v. *United States*, 217 U. S., 521; *Mattox* v. *United States*, 146 U. S., 147.)

2. Even were the question open, the decision of the court below should be affirmed.

The newspaper article was a statement of the fact that the case had been submitted to the jury in the morning and they had not agreed some six hours later. The writer then hazarded the belief that one of the defendants would be found guilty, but that there was great doubt about the ability of the jury to agree on the others, with the possible exception of two of them. There was also a reference to other pending indictments.

The article was colorless; was a fair statement of the facts which it purported to contain; and was a

mere guess as to the verdict of a jury which was evidently having difficulty. It can not be said that this article so prejudiced the minds of the jury as to justify a reversal.

As to the talk of the jurors with Swayne, it clearly appears that nothing was said about the trial. This could have had no effect upon their verdict.

E. *The conduct of the district attorney was free from error.*

1. The statement, in the district attorney's closing, that the defendants hated Stanley, was proper argument.

The theory of the district attorney was that the Indians had determined to get rid of Stanley as superintendent; and he argued that they intended by humiliation, ignominy, and force to drive him off the reservation. In his argument, after referring to the unexpected interference of the policeman and the shooting of him by Apapas, the district attorney continued that Apapas then turned to the man "they hated and had planned to malign and abuse, and seeing him there, went after him with his gun" (248, 249).

Counsel objected that the evidence did not justify the statement that these men hated Mr. Stanley and said, "And we take exception to that remark."

In the cases cited by defendants, the prosecuting attorney made a positive statement of fact which was not in evidence. In the present case we think the district attorney's argument was amply supported by evidence. But his statement was not

one of fact. It was mere argument from the evidence already introduced.

The rule is settled that the maintenance of the propriety of a logical inference from facts in evidence is not in itself the offering of evidence, but is always the function of counsel. His desired inferences may be forced, unnatural, and untenable, but he may, nevertheless, urge them to a jury, and it is for them to determine whether his deductions are correct. (3 Wigmore, Evidence, sec. 1807 (3); *Coombs* v. *State*, 75 Ind., 216; *State* v. *Moore*, 32 Oreg., 65.)

That in the present case the district attorney's remark was purely argument appears from the discussion following the objection. The court directed the jury to disregard any statement outside of the testimony and to be guided solely by that; the district attorney said that his statement was argument and purely a matter of the construction of the evidence (249).

It is to be further remarked that upon the conclusion of the discussion the defendants were apparently satisfied with the court's action. No exception was finally taken, nor was the court requested to discharge the jury. The point is waived, therefore; the defendants elected to take their chance of acquittal. (See *Lorenz* v. *United States*, 24 Ap. Cas. D. C., 337, 391.)

2. The question to Calisto Tortes was proper cross-examination.

This witness testified that he remained inside the schoolhouse when the other Indians left the room.

He was asked on cross-examination why, and replied he was scared to go out (197). The district attorney endeavored to show that the witness knew something was going to happen and had remained inside to avoid seeing it. The witness then explained his previous statement by saying that he was not scared until after the shooting; that he did not leave the room when the other Indians started out because it was crowded around the door.

He was then asked—the question complained of—whether he did not know when he went into the room that it was planned that the witness and certain others should stay inside the room and that Leonicio Lugo should go outside of the gate, so they would not see what happened.

The question is objected to as assuming a state of facts not in evidence (197).

The question was substantially whether a certain plan did not exist. It was in no sense a statement of fact by the district attorney, but simply an attempt to get a hostile witness to testify to what the examiner had reason to believe was the fact.

The method of such an examination is largely in the discretion of the trial court, and that discretion was not abused here.

It is submitted that this case must be dismissed for want of jurisdiction or the judgment affirmed.

JESSE C. ADKINS,
Assistant Attorney General.

MARCH 30, 1914.

APPENDIX.

Section 328, Penal Code. All Indians committing against the person or property of another Indian or other person any of the following crimes, namely, murder, manslaughter, rape, assault within tent to kill, assault with a dangerous weapon, arson, burglary, and larceny, within any Territory of the United States, and either within or without an Indian reservation, shall be subject therefor to the laws of such Territory relating to said crimes, and shall be tried therefor in the same courts and in the same manner and shall be subject to the same penalties as are all other persons charged with the commission of said crimes, respectively; and the said courts are hereby given jurisdiction in all such cases. And all such Indians committing any of the above-named crimes against the person or property of another Indian or other person within the boundaries of any State of the United States, and within the limits of any Indian reservation, shall be subject to the same laws, tried in the same courts and in the same manner, and be subject to the same penalties as are all other persons committing any of the above crimes within the exclusive jurisdiction of the United States: *Provided*, That any Indian who shall commit the offense of rape upon any female Indian within the limits of any Indian reservation shall be imprisoned at the discretion of the court. (35 Stat., 1151.)

In the Supreme Court of the United States

OCTOBER TERM, 1913

AMBROSIO APAPAS, CORNELIO LUBO, Francisco Lubo, et al., plaintiffs in error,

v.

THE UNITED STATES.

No. 746.

IN ERROR TO THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF CALIFORNIA

REPLY BRIEF OF DEFENDANTS ON MOTION TO DISMISS

On behalf of the defendants we contend that, granting that the argument of the solicitor general in his brief on motion to dismiss is good on all points argued therein except the last one, to-wit, point Four, involving assignment of error 36, still on this point the supreme court can take jurisdiction of this case on the ground that the defendant, Apapas' immunity, from self-incrimination guaranteed under the fifth amendment to the constitution, was violated. In the case of *Cincinnati etc. vs Thiebaud*, 177 U. S. 615, the following language is used: "When

our jurisdiction is invoked under section five of the judiciary act of March 3rd, 1891, (now Section 238 Judicial Code) on the ground that the case follows within the fourth, fifth or sixth of the classes of cases therein enumerated, it must appear that a title, right, privilege, or immunity was claimed under the constitution, and a definite issue in respect to the possession of the right must be distinctly deducible from the record;—and it is not sufficient that the point is raised in the assignment of errors. (Citing cases therefor.)" This point is brought to the supreme court under subdivision four of section five of said act of March 3rd, 1891, (now section 238 Judicial Code) which subdivision reads as follows: "In any case that involves the construction or application of the constitution of the United States." It is true that this question is not certified, but since the allowance of the writ of error is general, the following language used in the case of *Chapell vs. the United States*, 160 U. S. 499, is applicable to the present case. Said language is as follows: "But no question of jurisdiction having been separately certified or specified, and the writ of error having been allowed without restriction or qualification, this court, under the other clause of the statute above cited, has appellate jurisdiction of this case as one in which the constitutionality of a law of the United States was drawn in question; and, having acquired jurisdiction under this clause, has the power to dispose, not merely of the constitutionality of the question, but of the entire case, including all questions, whether of jurisdiction or of merits. (Citing cases therefor.)"

In this case last mentioned the constitutionality of a law of the United States was drawn in

question, whereas in the present case the construction or application of the constitution of the United States is involved and in either case the supreme court acquires jurisdiction as was held in *Cincinnati etc. vs. Thiebaud*, supra. The 36th assignment of error is not based on the hearsay rule as maintained by the solicitor general, but as shown by the record, is based on the ground that no proper foundation for a confession was laid. And now we proceed to show how the construction or application of the constitution of the United States was drawn in question in this case by the defendant's immunity from self-incrimination guaranteed by the constitution having been violated.

On the direct examination of J. F. Durlin, a Deputy United States Marshall in and for the southern district of California, who was a witness for the prosecution, after testifying that he was in the sheriff's office at Riverside, California, on the 6th of May, 1912, in the presence of Sheriff Wilson and Deputy Sheriff Nelson and Gabe Costa, and two of the defendants, Ambrosio Apapas and Francisco Lubo and no others, was asked the following questions and made the following answers: (Testimony of J. F. Durlin R. 166).

Q. Now, when you went there to the sheriff's office, and all of these persons were present, did you have any conversation?

A. Yes sir.

Q. That gun was there, was it, in the room?

A. Yes sir: It was brought in at my request———.

Q. Was this gun shown to the defendant Apapas?

A. It was.

Q. Was there any question asked him?

A. Yes sir.

Q. What was the first thing that was said in the conversation with Apapas?

A. I asked him if he ever saw that gun before.

Q. What did he say, if anything?

A. He answered me back——.

Mr. Johnstone: One minute. We object that there is no proper foundation laid for a confession; there is no evidence to show that there was any inducement or immunity offered, or what the circumstances were under which the statements were made.

Mr. Robinson: We do not intend to prove that there were any inducements offered, your honor, but I understood counsel the other day objected to my method of proving that, so in order to meet his objection and start with a clear sheet, I adopted what I did not think was the correct method, of simply asking what happened, and if anything objectionable comes up, counsel can object to it.

The Court: I think perhaps the foundation was laid the other day for the transaction. I will overrule the objection.

Exception taken.

Q. What did he say, if anything?

A. He said yes, that he had seen the gun before.

Question by Mr. Robinson: In what language did he say that?

A. He answered first, and I asked the direct question, I said: Did you ever see this gun before? And he understood what I was saying, and he said "Si," and that is Spanish for "Yes," and then through the interpreter———.

Mr. Estudillo: Just a minute. I move to strike out what this witness gives as his opinion.

Mr. Robinson: That he understood what he said—those words "He understood what I said" may be stricken out, of course.

A. He answered "Si," which is "Yes" in Spanish. Then through the interpreter the question was put to him and he answered———.

Mr. Johnstone: Just a minute. We object to the answer of the interpreter.

Mr. Robinson: I have stopped the witness. It is not necessary to take up time.

Q. When the gun was shown to him and these questions were asked did the defendant Apapas look at the gun?

A. Yes sir.

Q. And did he make any motion or gesture at all toward the gun?

A. Yes sir.

Q. What was it?

A. (indicating) "Si."

Q. Now, I show you six shells, four empty and two loaded cartridges, being United States exhibit 6 for identification, and ask you to look

at those and see if there are any marks on them by which you can identify them.

A. Yes sir.

Q. You recognize marks on each of them, do you?

A. Yes sir.

Q. Who make those marks?

A. I did.

Q. Where?

A. In the grand jury room.

Q. Federal grand jury room?

A. Yes sir.

Q. Up to the time that you made those marks on those shells in the grand jury room, in whose possession had they been?

A. They had been in my possession.

Q. From whom did you get those shells and gun?

A. Sheriff Wilson of Riverside.

Q. On this occasion of which you have testified?

A. Yes sir.

Q. Are they in the same condition, with the exception of the marks you put on them, as when you got them from Sheriff Wilson?

A. Just the same.

Q. Did you mark the two cartridges?

A. Yes sir.

Q. Did you make this cross-cut on the head of each one of those bullets?

A. Yes sir.

Q. When you received them were those bullets in the gun?

A. They were in the gun.

Mr. Robinson: We offer them as United States exhibit 6.

Mr. Johnstone: They are received in evidence solely as being cartridges taken from the gun without any reference to the position they were in the gun.

Q. By Mr. Robinson: Mr. Durlin, do you remember in what order those cartridges, loaded and unloaded, were in the gun?

A. To the best of my recollection now there were four empties and two loaded. That is the way they ran.

Q. Right in sequence?

A. Right in sequence.

Q. You don't know which loaded one was to the left or which was to the right, but they were in a circle?

A. I do not.

Q. They were all in a circle, were they?

A. All in a circle.

The testimony above set forth shows what the witness Durlin answered over the objection of the defendants, that no proper foundation had been laid for a confession and that same was not shown to be voluntary.

In the case of the *People vs. Quan Gim Gow*, Vol. 17 Cal. App. Dec., page 786, 789, it is

stated, "The fact that the questioning was done by police officers presents an important item for consideration in determining whether the admissions extracted were of a voluntary character. As is said in *Bram vs. United States*, 168 U. S. 540: 'Whatever be the rule in this regard in England, however, it is certain that where a confession is elicited by the questions of a policeman, the fact of its having been so obtained it is conceded may be an important element in determining whether the answers of the prisoner were voluntary. The attempt on the part of a police officer to obtain a confession by interrogating has been often reproved by the English courts as approaching dangerously near to a violation of the rule protecting the accused from being compelled to testify against himself.'"

The case of *Bram vs. United States*, 168 U. S. 532, establishes as shown by the syllabi the following propositions:

1. Where a conversation with the accused is offered in evidence as a confession, and is admissable only as a confession, the measure of proof resulting from it is not to be considered in determining its admissibility.

2. The use which was made of the prisoner's statement precludes the state from saying that it was not used to his prejudice.

3. The prosecution cannot offer illegal evidence to prove guilt, and then, for the purpose of avoiding the consequence of its wrongful admission, be heard to assert that the evidence was not prejudicial because it did not tend to prove guilt.

4. A confession which is not voluntary is not admissible in evidence under the Fifth

Amendment to the Federal Constitution, declaring that no person shall be compelled in a criminal case to be a witness against himself.

5. The voluntary character of an alleged confession depends on the question whether the making of the statement was voluntary and without inducement or compulsion, and not whether the particular communications contained in it were voluntary or not.

6. The mere fact that a confession is made to a police officer while the accused is under arrest, in or out of prison, or is drawn out by his questions, does not necessarily render the confession involuntary; but, as one of the circumstances, such imprisonment or interrogation may be taken into account in determining whether or not the statements made by the prisoner are voluntary.

Therefore we maintain that the constitutional right of the defendant Apapas not to be compelled to incriminate himself, was violated by the admission and testimony of J. F. Durlin, above given when defendant was asked if he had seen the gun before and he answered "Si" meaning "Yes." The measure of proof resulting from this admission is not to be considered, as is well settled by the Bram case above cited. At the time of this confession the defendant was in the presence of the police officers mentioned above and in jail, and it was no where shown that defendant was informed through the interpreter that he did not have to answer if he didn't want to, nor was he informed of his other rights through the interpreter, nor was he informed that the admission would be used against him, all of which facts defendant thinks suffi-

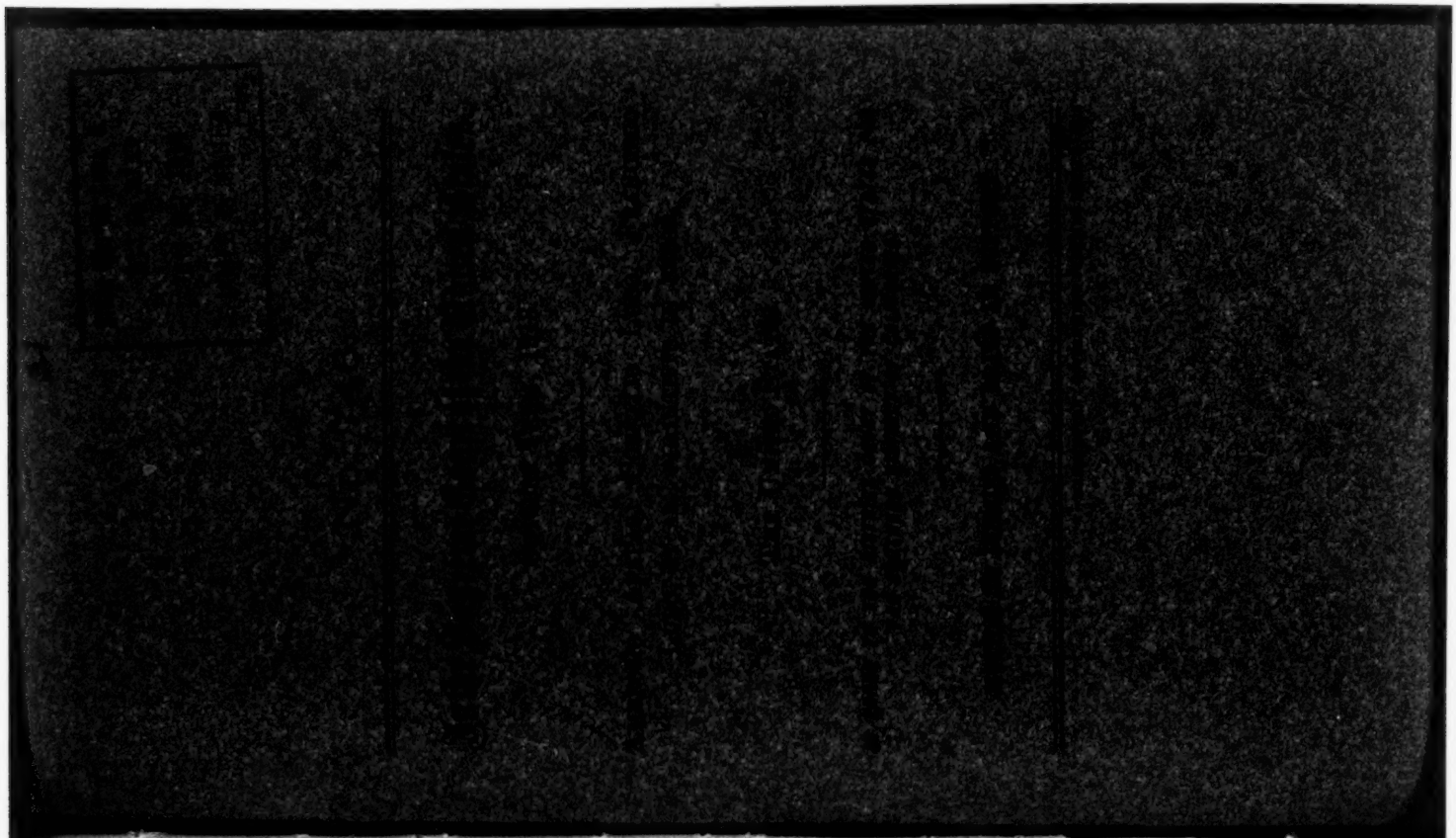
ciently show that error was committed by the court sufficient to cause a reversal of this case, and therefore this appeal should not be dismissed.

THEODORE MARTIN and

MIGUEL ESTUDILLO,

Attorneys for Defendants.

January, 1914.



In the Supreme Court of the United States.

OCTOBER TERM, 1913.

AMBROSIO APAPAS, CORNELIO LUBO, Francisco Lubo, et al., plaintiffs in error,
v.
THE UNITED STATES.

No. 746.

IN ERROR TO THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF CALIFORNIA.

MOTION TO DISMISS AND BRIEF IN SUPPORT.

The Solicitor General, on behalf of the United States, moves that this writ of error be dismissed.

The indictment charged the murder of a white man by Indians on May 2, 1912, within the limits of the Cahuilla Indian Reservation in the State of California, a district and country under the exclusive jurisdiction of the United States, in violation of sections 273, 275, and 328 of the Criminal Code. Plaintiffs in error were found guilty in the second degree and sentenced to 20 years' imprisonment.

There are 100 assignments of error. Several of these relate to the court's refusal to give an instruc-

tion requested by defendants, to its denial of defendants' motion for a new trial, its denial of the motion to direct a verdict for defendants on the ground that the court had no jurisdiction since defendants were citizens of the United States, to the rendition of judgment because of lack of jurisdiction of defendants' persons, and to the imposition of sentence because defendants were not proven to be Indians and wards of the Government. The remaining assignments, 95 in number, relate to rulings on the evidence.

None of these assignments is sufficient to confer appellate jurisdiction on this court.

1. In view of the verdict, the case is not a capital one (*Rakes* v. *United States*, 212 U. S. 55); so even if this court's review of such cases had not been transferred to the Circuit Courts of Appeals by the Judicial Code, sections 128 and 238, no writ of error would lie on this ground.

2. The question of the trial court's jurisdiction is not certified—a fatal objection to its consideration here as a basis for the present writ. *Ansbro* v. *United States*, 159 U. S. 695; *Chappell* v. *United States*, 160 U. S. 499.

3. The 63d assignment of error attacked the denial of defendants' motion for a directed verdict, on the ground that the district court had no jurisdiction, as the defendants were citizens of the United States, their ancestors were citizens of the Republic of Mexico, and by virtue of the treaty of Guada-

lupe Hidalgo became citizens of the United States (R. 441). The motion in question alleged further that by virtue of the act of Congress admitting California to statehood the defendants became citizens of the State of California, and that they had severed and given up all tribal relations (R. 246–247). It was not questioned, however, that defendants were Indians of the Cahuilla tribe and lived on the reservation.

The court admitted evidence relating to the tribal organization of the Cahuilla Indians (R. 248–260), and held that under the treaty a few Indians in the ceded territory became citizens of the United States, but the great body of them did not; that the question in any particular case was a political one; that as the President had established a reservation for these Indians and placed an agent over them, his action in that regard was controlling upon the court—citing *United States* v. *Joseph*, 94 U. S. 614, and *United States* v. *Kagama*, 118 U. S. 375, (R. 260–261).

There is no constitutional or treaty question here presented. According to the view of the trial court the construction of the treaty was not involved, since the question of defendants' citizenship was a political one. Whether this view as to citizenship was erroneous or sound, it does not affect the judgment, since this court has decided that the very statute on which this indictment was founded (Criminal Code, sec. 328) applies to tribal Indians

regardless of their citizenship. *United States* v. *Celestine*, 215 U. S. 278.

Whether or not defendants meant to assail the constitutionality of this statute, they did not do so in terms; and this in itself should suffice to prevent them from raising the question here. *Ansbro* v. *United States, supra; Muse* v. *Arlington Hotel Co.*, 168 U. S. 430; *Paraiso* v. *United States*, 207 U. S. 368. But assuming that the question was properly raised below and appears of record, its discussion is foreclosed by *Cherokee Nation* v. *Hitchcock*, 187 U. S. 294; *United States* v. *Rickert*, 188 U. S. 432; *United States* v. *Celestine, supra; Hallowell* v. *United States*, 221 U. S. 317; *United States* v. *Sandoval*, decided on October 20th of the present term. This destroys it as a foundation for the present writ of error. *Rakes* v. *United States*, 212 U. S. 55; *David Kaufman & Sons Co.* v. *Smith*, 216 U. S. 610.

4. The 36th assignment of error is based on defendants' objection to a question put to the deputy United States marshal, a witness for the prosecution, concerning a statement made by defendant Apapas after the crime. The witness, with a warrant for the arrest of Apapas, was in the office of the sheriff who had Apapas in custody, and had the latter brought before him. The gun with which the murder was committed was shown Apapas; witness asked him "if he ever saw that gun before." Apapas answered "Si" (yes). This testimony was objected to "on the grounds that no proper

foundation was laid for a confession, as there is no evidence to show that there were not any inducement or immunity offered " (R. 166). As a matter of fact such foundation had been laid in the previous testimony of the sheriff, who testified regarding that conversation in his office that to the best of his recollection there was no conversation with Apapas prior to the question; that no gestures were used toward Apapas; that he was not in shackles, and that no one had hands on him. Defendant thereupon objected to the statement of the question and answer by the sheriff on the ground that the question as asked of the defendant by the interpreter, through whom the conversation was conducted, should be introduced to determine whether or not a hope of reward or immunity had been held out or threats or duress used. This objection was overruled and defendant excepted (R. 93–95; *cf.* 98–100). It is apparent, therefore, that assignment 36 is a mere variation of the earlier exception based on the hearsay rule, and has nothing to do with defendants' immunity from self-incrimination under the Fifth Amendment to the Constitution.

A careful examination of the record has failed to reveal any other alleged errors even colorably within the cognizance of this court under section 238 of the Judicial Code. The writ of error should therefore be dismissed.

JOHN W. DAVIS,
Solicitor General.

DECEMBER, 1913.

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APAPAS *v.* UNITED STATES.

ERROR TO THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF CALIFORNIA.

No. 746. Argued April 8, 1914.—Decided May 11, 1914.

The right of direct review by this court of a judgment of the District Court under § 238, Judicial Code, depends upon whether the question of jurisdiction only is involved or whether the case involves the constitutional or Federal question.

This court cannot review directly the judgment of the District Court on the question of jurisdiction under § 238, Judicial Code, when under the writ of error the whole case is brought up and there is no certificate as to the jurisdiction as required by § 238.

When the constitutional question was not raised in the court below this court cannot directly review the judgment of the District Court under § 238, Judicial Code. *Itow* v. *United States*, *ante*, p. 581.

Murder committed by Indians on a United States Indian reservation is a crime against the authority of the United States, expressly punishable by § 328, Penal Code, and within the cognizance of the Federal courts without reference to the citizenship of the accused.

Every objection to the admission of a statement or confession of the accused cannot be regarded as involving the construction of the Constitution merely because that instrument was referred to when in substance and effect there was no controversy concerning the Constitution but only a contention as to the method of procedure.

THE facts, which involve the jurisdiction of this court to review judgments of the District Court under § 238, Judicial Code, are stated in the opinion.

Mr. Miguel Estudillo, with whom *Mr. Theodore Martin* was on the brief, for plaintiffs in error.

Mr. Assistant Attorney General Adkins, with whom *The Solicitor General* was on the brief, for the United States.

MR. CHIEF JUSTICE WHITE delivered the opinion of the court.

Ten persons described as Indians were, in July 1912, indicted for the murder of William H. Stanley, a white person, "at, upon and within the limits of a United States Indian Reservation, known as the Cahuilla Indian Reservation, in the County of Riverside, within the Southern Division of the Southern District of California, and within the jurisdiction" of the court below, in violation of §§ 273, 275 and 328 of the Penal Code of 1909. As the result of a trial, four of the accused were acquitted and the six who are plaintiffs in error here were convicted of murder in the second degree and sentenced to ten years imprisonment each, and prosecute this direct writ of error to reverse such conviction and sentence. There are one hundred assignments of error, but before we come to consider them we must dispose of a motion made by the Government to dismiss on the ground that we are without jurisdiction because the case is susceptible only of review by the Circuit Court of Appeals of the Ninth Circuit.

Undoubtedly, under the general provisions of § 128 of the Judicial Code, power to review is lodged in the Circuit Court of Appeals of the Ninth Circuit, and our authority, if any, to consider the case depends therefore upon whether it comes within the class of cases authorized to be brought directly here from a trial court under the provisions of § 238. By such section in addition to the power conferred to bring directly to this court a question of jurisdiction of a trial court as a Federal court under the conditions and subject to the limitations stated, the right to directly review in a case of this kind is conferred only "in any case that involves the construction or application of the Constitution of the United States; in any case in which the constitutionality of any law of the United States, or the validity or construction of any treaty made under its

authority is drawn in question; and in any case in which the constitution or law of a State is claimed to be in contravention of the Constitution of the United States."

The settled significance of these provisions we have just pointed out in the case of *Itow and Fushimi* v. *United States, ante*, p. 581, just decided, and under the principle there applied it follows that we must determine the right to direct review by ascertaining whether any of the issues enumerated in the provisions of § 238 were below involved in the cause. Coming to apply this test, only three out of the matters assigned as error have any conceivable relation to the conditions defined by the statute as essential to give the right to a direct review. They are: (1) a challenge of the jurisdiction of the court below; (2) a contention as to the effect of the treaty of Guadalupe Hidalgo; (3) an assertion that a constitutional question was involved in the action of the trial court in admitting over objection, testimony as to a statement or admission of Ambrosio Apapas, one of the accused.

As to the first, while it was raised below, it is obviously inadequate to sustain the right to direct review, since under the writ of error the whole case is brought here and not the question of jurisdiction alone, as provided in § 238, and because there is no certificate as to the jurisdiction as required by the section. *Maynard* v. *Hecht*, 151 U. S. 324; *Chappell* v. *United States*, 160 U. S. 499, 507; *Courtney* v. *Pradt*, 196 U. S. 89, 91, 92.

While the second contention based upon the treaty of Guadalupe Hidalgo was raised in the lower court, it in no sense involved the validity or construction of the treaty, and therefore affords no support for the right to directly review. In substance the proposition concerning the treaty is this: that as the ancestors of the accused prior to the termination of the war with Mexico were citizens of Mexico, and became by the treaty citizens of the United States and of the State of California, they were therefore

not amenable to prosecution in the courts of the United States for the crime of murder committed within the State of California, however much they may have been susceptible of being prosecuted for such crime in an appropriate state court. But assuming, for argument's sake, the premise based on the treaty to be sound, and disregarding for brevity's sake the fact that the accused were tribal Indians leading a tribal life, and living on a tribal reservation under the control of the United States, the deduction based on the premise is so absolutely devoid of merit as not in any real sense to involve the construction of the treaty. We so say because the prosecution was for murder committed by Indians on a United States Indian Reservation and therefore was for a crime against the authority of the United States, expressly punishable by statute (§ 328, Penal Code), and within the cognizance of the courts of the United States, without reference to the citizenship of the accused, as settled by a long line of authority. *United States* v. *Kagama*, 118 U. S. 375; *United States* v. *Celestine*, 215 U. S. 278; *Donnelly* v. *United States*, 228 U. S. 243, 270; *United States* v. *Sandoval*, 231 U. S. 28, 39. Indeed, in answering the argument of the Government on the motion to dismiss, if not in express terms, at least virtually, it is conceded that the two propositions we have disposed of thus are inadequate to sustain the resort to a direct writ of error. But it is urged that the third contention plainly is sufficient for that purpose, that contention as we have said being based upon an exception taken to the action of the trial court in receiving testimony concerning an alleged statement or admission made by one of the accused, Apapas. But we search the record in vain to find the slightest reference made to the Constitution of the United States at the time the objection referred to was taken or anything whatever to indicate in any manner that the attention of the court below was directed to the fact that there

was any controversy or dispute involving the Constitution of the United States.

Under this condition, as pointed out in the case of *Itow and Fushimi* v. *United States, supra,* there is no ground whatever for saying that a constitutional right was involved within the exceptions created by § 238 so as to justify disregarding the regular course of judicial procedure by coming directly to this court. The theory upon which it is insisted in argument that the right to direct review results because of the action of the trial court as to the admission of the statement is based upon the premise that because the Constitution guaranteed against compulsory self-incrimination, therefore any objection made to the admission of the statement or confession by the accused necessarily and inherently involved a constitutional right and amounted to a statement of the same although no express mention was made of the Constitution and nothing appears to indicate that any contention whatever existed as to the significance and operation of the Constitution. But this proposition if carried to its legitimate conclusion would embrace every conceivable controversy as to every possible right, since under a constitutional system of government all rights in their last analysis are referable to the safeguards of the Constitution. But we need not further demonstrate the unsoundness of the contention since it is directly in conflict with the settled rule which we have just re-stated in the *Itow and Fushimi Case.* And although to go further is superfluous, to prevent misconception or unfounded inferences as to what we decide, we say that we must not be understood as holding that even although it be assumed for the sake of argument that the constitutional guarantee against compulsory self-incrimination would apply to an objection made to the offer in evidence of an admission by an accused person, it would follow that such guarantee would be involved in an objection to the admission in evidence of a confession in

the sense of § 238, even if in making the objection the guarantee of the Constitution was expressly referred to unless there was some real controversy concerning the meaning of the constitutional guarantee. We make this reservation because it is quite apparent that such an objection in the absence of some difference as to the significance of the Constitution might well involve but the exercise of discretion as to the order or method of proof and the calling into play of judgment to determine whether or not the proof as offered brought the question which was to be decided within the undisputed scope of the constitutional safeguard. In other words, we do not hold that any and every objection to the admission of a statement or confession of an accused can be made to involve the construction of the Constitution merely by referring to that instrument when in substance and effect there is no controversy concerning the Constitution but only a contention as to the methods of procedure. Conceptions which are well illustrated by the record before us, where the entire argument concerning the Constitution is based on the following objection taken to the admission of the statement of the accused: Counsel for accused, "One minute. We object that there is no proper foundation laid for a confession as there is no evidence to show that there was any (no) inducement or immunity offered or what the circumstances were under which the statement was made."

Dismissed for want of jurisdiction.